

## **EXHIBIT 28**

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC

Melissa S. Hayward  
Texas Bar No. 24044908  
MHayward@HaywardFirm.com  
Zachery Z. Annable  
Texas Bar No. 24053075  
ZAnnable@HaywardFirm.com  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding
	§	
vs.	§	No. 20-3190-sgj11
	§	
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



**DECLARATION OF JOHN A. MORRIS  
IN SUPPORT OF THE DEBTOR'S MOTION FOR AN ORDER REQUIRING MR. JAMES  
DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT  
FOR VIOLATING THE TRO**

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I, John A. Morris, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declares as follows:

1. I am a partner in the law firm Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Motion") being filed contemporaneously herewith.<sup>2</sup> I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit G** is a true and correct copy of certain text messages between James Dondero and Jason Rothstein.<sup>3</sup>

3. Attached as **Exhibit K** is a true and correct copy of a letter from Pachulski Stang Ziehl & Jones LLP to D. Michael Lynn, dated December 23, 2020.

4. Attached as **Exhibit L** is a true and correct copy of an e-mail string dated December 18, 2020, concerning certain trading activity.

5. Attached as **Exhibit M** is a true and correct copy of the Response to K&L Gates LLP, dated December 22, 2020.

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

<sup>3</sup> Because this Motion is related to the Debtor's motion for a preliminary injunction that will be heard on January 8, 2021, for the convenience of the Court and the parties, the Debtor adopts for this Motion the order of exhibits set forth in the *Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on January 8, 2021*. [Adv. Pro. Docket No. 45], and any amendments thereto.

6. Attached as **Exhibit N** is a true and correct copy of the Response to K&L Gates LLP, dated December 23, 2020.

7. Attached as **Exhibit P** is a true and correct copy of an e-mail string dated December 12, 2020, concerning a possible deal.

8. Attached as **Exhibit Q** is a true and correct copy of an e-mail string dated December 16, 2020 regarding list for joint meeting.

9. Attached as **Exhibit R** is a true and correct copy of certain text messages between James Dondero and Melissa Schroth

10. Attached as **Exhibit S** is a true and correct copy of certain text messages between James Dondero and Isaac Leventon.

11. Attached as **Exhibit U** is a true and correct copy of a letter from Bonds Ellis to J. Pomerantz, dated December 29, 2020.

12. Attached as **Exhibit W** is a true and correct copy of an e-mail string dated December 15, 2020, concerning The Dugaboy Investment Trust and Get Good Trust Common Interest Agreement.

13. Attached as **Exhibit X** is a true and correct copy of a letter dated December 30, 2020, from K&L Gates to Pachulski Stang Ziehl and Jones.

14. Attached as **Exhibit Y** is a true and correct copy of an e-mail between Grant Scott and Scott Ellington dated December 23, 2020.

15. Attached as **Exhibit Z** is a true and correct copy of the transcript of the deposition of Mr. James Dondero, dated January 5, 2021.

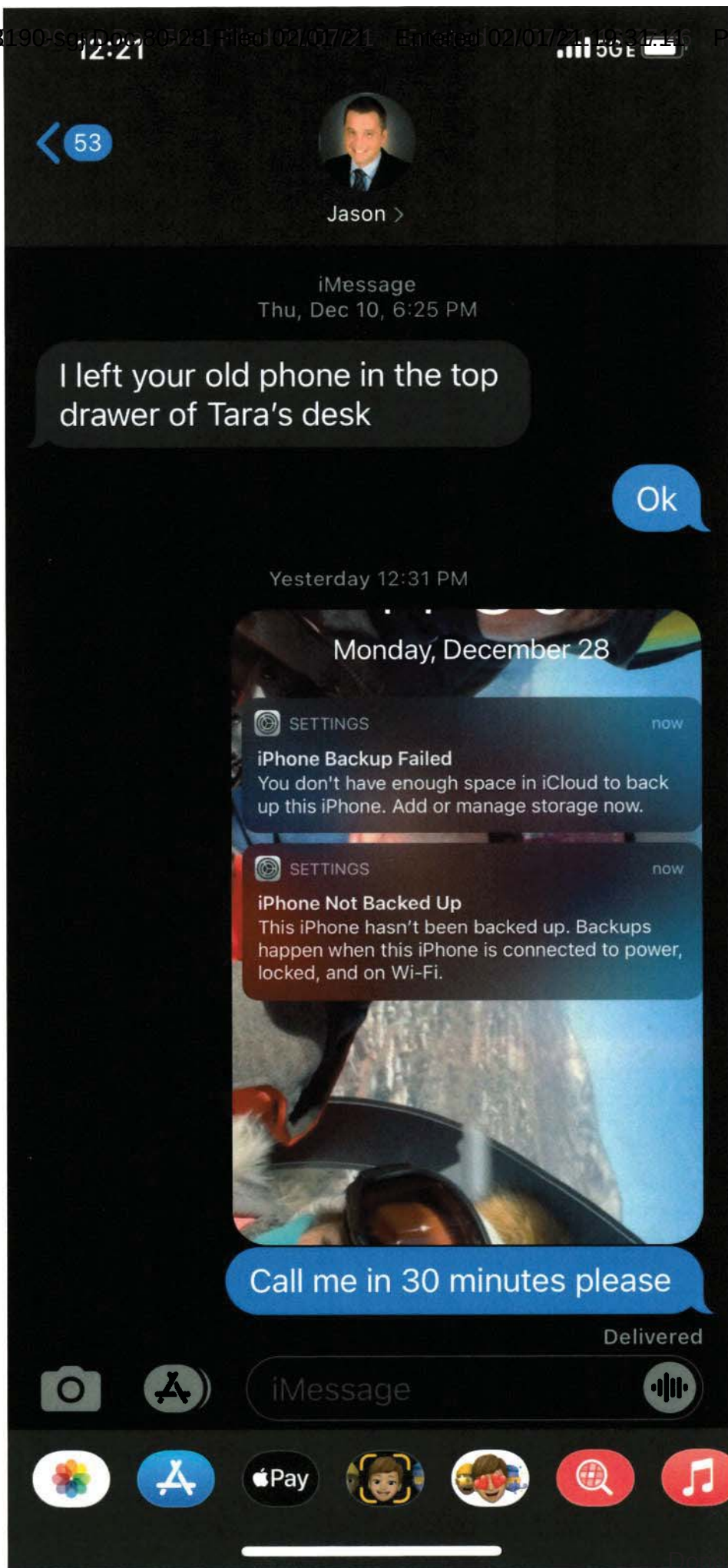
I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: January 7, 2021.

/s/ John A. Morris

John A. Morris

## EXHIBIT G



## EXHIBIT K





LAW OFFICES  
LIMITED LIABILITY PARTNERSHIP

LOS ANGELES, CA  
SAN FRANCISCO, CA  
WILMINGTON, DE  
NEW YORK, NY

10100 SANTA MONICA BLVD.  
13th FLOOR  
LOS ANGELES  
CALIFORNIA 90067

TELEPHONE: 310/277 6910

FACSIMILE: 310/201 0760

SAN FRANCISCO  
150 CALIFORNIA STREET  
15th FLOOR  
SAN FRANCISCO  
CALIFORNIA 94111-4500

TELEPHONE: 415/263 7000

FACSIMILE: 415/263 7010

DELAWARE  
919 NORTH MARKET STREET  
17th FLOOR  
P.O. BOX 8705  
WILMINGTON  
DELAWARE 19899-8705

TELEPHONE: 302/652 4100

FACSIMILE: 302/652 4400

NEW YORK  
780 THIRD AVENUE  
34th FLOOR  
NEW YORK  
NEW YORK 10017-2024

TELEPHONE: 212/561 7700

FACSIMILE: 212/561 7777

WEB: [www.pszjlaw.com](http://www.pszjlaw.com)

Jeffrey N. Pomerantz

December 23, 2020

310.772.2336  
[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)

**Via E-mail**

D. Michael Lynn  
Bonds Ellis Eppich Schafer Jones  
LLP  
420 Throckmorton Street  
Suite 1000  
Fort Worth, Texas 76102

**Re: Termination of James Dondero Access to Office  
and Services**

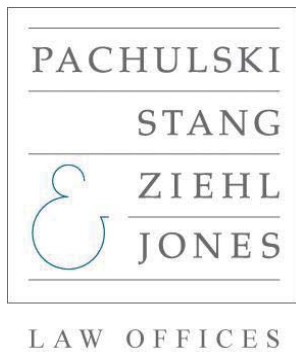
Dear Judge Lynn:

As you know, on December 10, 2020, a temporary restraining order was entered against Mr. James Dondero by the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “TRO”). Case No. 20-03190-sgj, Docket No. 10 (Bankr. N.D. Tex. Dec. 10, 2020).

Pursuant to the TRO, Mr. Dondero was, among others things, prohibited from communicating with the employees of Highland Capital Management, L.P. (the “Debtor”) (subject to certain limited exceptions) and interfering with or otherwise impeding, directly or indirectly, the Debtor’s business. We have discussed with you several instances in which Mr. Dondero breached the terms of the TRO and will not repeat them here.

As you also know, the Debtor manages certain collateralized loan obligations (the “CLOs”). The Debtor sought to cause the CLOs to sell certain publicly-traded equity securities, including AVYA and SKY (tickers), prior to Thanksgiving. Mr. Dondero blocked these trades. That conduct, among other things, caused the TRO to be entered.

These trades were also the subject to the *Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager,*



December 23, 2020  
Page 2

*to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1528] (the “CLO Motion”), which was filed by, among others, NexPoint Advisors, L.P. (“NPA”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA”). At the hearing on December 16, 2020, Judge Jernigan stated both that she agreed that the CLO Motion was brought by “Mr. Dondero, through different entities” and that it was frivolous.

On December 22, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLOs’ sale of the AVYA and SKY securities. To justify their conduct, those employees mimicked the frivolous arguments made in the CLO Motion. This conduct violated the TRO, and HCMLP reserves all rights to seek appropriate sanctions with respect to such violation.

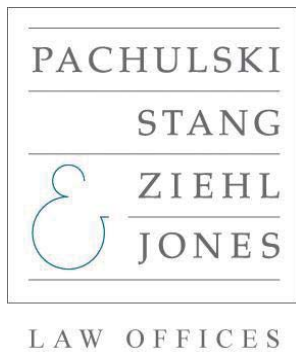
As a result of this conduct, among other things, HCMLP has concluded that Mr. Dondero’s presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive to HCMLP’s continued management of its bankruptcy case to continue.

As a consequence, Mr. Dondero’s access to the offices located at 200/300 Crescent Court, Suite 700, Dallas, Texas 75201 (the “Office”), will be revoked effective Wednesday, December 30, 2020 (the “Termination Date”). As of the Termination Date, Mr. Dondero’s key card will be de-activated and building staff will be informed that Mr. Dondero will no longer have access to the Office.

Further, as of the Termination Date, Mr. Dondero’s access to his @highlandcapital.com email account will be revoked, and Mr. Dondero will no longer have access to that email account or any emails, calendars, or contacts associated with that email account.

In addition, Mr. Dondero’s access to the HCMLP system and all services maintained on that system, including his Bloomberg terminal, will be revoked as of the Termination Date.

HCMLP will also terminate Mr. Dondero’s cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero (collectively, the “Cell Phones”). HCMLP demands that Mr. Dondero immediately turn over the Cell Phones to HCMLP by delivering them to you; we can make arrangements to recover the phones from you at a later date. The Cell Phones and



December 23, 2020  
Page 3

the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or “wiping” any information or messages on the Cell Phone. HCMLP, as the owner of the account and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.

Any attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Similarly, any attempts by Mr. Dondero to access his @highlandcapital.com email account or any other service previously provided to Mr. Dondero by HCMLP will be viewed as an act of trespass, theft, and/or an attempted breach of HCMLP’s security protocols.

Finally, HCMLP demands that Mr. Dondero take all steps necessary to retain and protect from loss, destruction, alteration or defacement all documents, communications, and information relating to the Debtor, the Debtor’s assets, any assets managed by the Debtor, or the Debtor’s employees.

HCMLP reserves all rights that it may have whether at law, equity, or in contract, including the right to restrict the access of HCMFA and NPA employees to the Office and HCMLP-provided services. Nothing herein will be construed as a waiver of any such rights.

Sincerely,

Jeffrey N. Pomerantz

cc: Ira Kharasch, Esq.  
John Morris, Esq.  
Gregory Demo, Esq.

## EXHIBIT L

**From:** Jim Dondero <JDondero@HighlandCapital.com>

**To:** Scott Ellington <SEllington@HighlandCapital.com>

**Subject:** FW: Jefferies recap

**Date:** Fri, 18 Dec 2020 16:03:32 -0600

**Importance:** Normal

**Inline-Images:** image001.jpg; image002.png

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**From:** Joe Sowin

**Sent:** Friday, December 18, 2020 3:34 PM

**To:** Jim Dondero ; DC Sauter

**Subject:** FW: Jefferies recap

JOSEPH R. SOWIN

Co-Chief Investment Officer & Global Head of Equity Trading



300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.419.4492 | C: 203.912.5935 | F: 972.628.4147

[jsowin@highlandcapital.com](mailto:jsowin@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

---

**From:** James Seery <[jpmseeryjr@gmail.com](mailto:jmseeryjr@gmail.com)>

**Sent:** Friday, December 18, 2020 3:32 PM

**To:** Steven Haltom <[SHaltom@HighlandCapital.com](mailto:SHaltom@HighlandCapital.com)>; Brad Gianiny <[bgianiny@jefferies.com](mailto:bgianiny@jefferies.com)>; Cyrus Eftekhari <[CEftekhari@HighlandCapital.com](mailto:CEftekhari@HighlandCapital.com)>; Christopher A Bianchi <[cbianchi@jefferies.com](mailto:cbianchi@jefferies.com)>; James Colasanto <[jcolasanto@jefferies.com](mailto:jcolasanto@jefferies.com)>; James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Joe Sowin <[JSowin@HighlandCapital.com](mailto:JSowin@HighlandCapital.com)>; Matt Pearson <[MPearson@HighlandCapital.com](mailto:MPearson@HighlandCapital.com)>; NYMO1 <[NYMO1@Jefferies.com](mailto:NYMO1@Jefferies.com)>; Ronald Wong <[rwong@jefferies.com](mailto:rwong@jefferies.com)>; R-Settlement <[R-Settlement@Highlandfunds.com](mailto:R-Settlement@Highlandfunds.com)>

**Cc:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>

**Subject:** Re: Jefferies recap

To be clear, Avaya should be allocated evenly to the 10 CLOs that hold it. NO account sold short. Thanks

Best. Jim

Jim Seery

631-804-2049

[jpmseeryjr@gmail.com](mailto:jmseeryjr@gmail.com)

---

**From:** Jim Seery <[jpmseeryjr@gmail.com](mailto:jmseeryjr@gmail.com)>

**Date:** Friday, December 18, 2020 at 4:30 PM

**To:** Steven Haltom <[SHaltom@HighlandCapital.com](mailto:SHaltom@HighlandCapital.com)>; Brad Gianiny <[bgianiny@jefferies.com](mailto:bgianiny@jefferies.com)>; Cyrus

Eftekhari <[CEftekhari@HighlandCapital.com](mailto:CEftekhari@HighlandCapital.com)>, Christopher A Bianchi <[cbianchi@jefferies.com](mailto:cbianchi@jefferies.com)>, James Colasanto <[jcolasanto@jefferies.com](mailto:jcolasanto@jefferies.com)>, James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>, Joseph Sowin <[JSowin@HighlandCapital.com](mailto:JSowin@HighlandCapital.com)>, Matt Pearson <[MPearson@HighlandCapital.com](mailto:MPearson@HighlandCapital.com)>, NYMO1 <[NYMO1@Jefferies.com](mailto:NYMO1@Jefferies.com)>, Ronald Wong <[rwong@jefferies.com](mailto:rwong@jefferies.com)>, R-Settlement <[R-Settlement@Highlandfunds.com](mailto:R-Settlement@Highlandfunds.com)>  
**Cc:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>  
**Subject:** Re: Jefferies recap

The NXRT is out of the HCMLP internal.

SKY should be allocated evenly across Grayson and Greenbriar CLO

Avaya should be allocated pro rata across all of the CLOS except Acis 7.

Please call me with any questions.

Thanks

Best. Jim

Jim Seery

631-804-2049

[jipseeryjr@gmail.com](mailto:jipseeryjr@gmail.com)

---

**From:** Steven Haltom <[SHaltom@HighlandCapital.com](mailto:SHaltom@HighlandCapital.com)>

**Date:** Friday, December 18, 2020 at 4:21 PM

**To:** Brad Gianiny <[bgianiny@jefferies.com](mailto:bgianiny@jefferies.com)>, Cyrus Eftekhari <[CEftekhari@HighlandCapital.com](mailto:CEftekhari@HighlandCapital.com)>, Christopher A Bianchi <[cbianchi@jefferies.com](mailto:cbianchi@jefferies.com)>, James Colasanto <[jcolasanto@jefferies.com](mailto:jcolasanto@jefferies.com)>, Jim Seery <[jipseeryjr@gmail.com](mailto:jipseeryjr@gmail.com)>, James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>, Joseph Sowin <[JSowin@HighlandCapital.com](mailto:JSowin@HighlandCapital.com)>, Matt Pearson <[MPearson@HighlandCapital.com](mailto:MPearson@HighlandCapital.com)>, NYMO1 <[NYMO1@Jefferies.com](mailto:NYMO1@Jefferies.com)>, Ronald Wong <[rwong@jefferies.com](mailto:rwong@jefferies.com)>, R-Settlement <[R-Settlement@Highlandfunds.com](mailto:R-Settlement@Highlandfunds.com)>

**Subject:** RE: Jefferies recap

Brad,

What accounts are these in?

Steven Haltom | Manager, Operations



300 Crescent Court | Suite 700 | Dallas, Texas 75201

972.628.4178 | [shaltom@hcmlp.com](mailto:shaltom@hcmlp.com) | [www.hcmlp.com](http://www.hcmlp.com)

---

**From:** Brad Gianiny <[bgianiny@jefferies.com](mailto:bgianiny@jefferies.com)>

**Sent:** Friday, December 18, 2020 3:02 PM

**To:** Cyrus Eftekhari <[CEftekhari@HighlandCapital.com](mailto:CEftekhari@HighlandCapital.com)>; Christopher A Bianchi <[cbianchi@jefferies.com](mailto:cbianchi@jefferies.com)>; James Colasanto <[jcolasanto@jefferies.com](mailto:jcolasanto@jefferies.com)>; Jim Seery

<jpseeryjr@gmail.com>; James Romey <jromey@DSIConsulting.com>; Joe Sowin <JSowin@HighlandCapital.com>; Matt Pearson <MPearson@HighlandCapital.com>; NYMO1 <NYMO1@Jefferies.com>; Ronald Wong <rwong@jefferies.com>; R-Settlement <R-Settlement@Highlandfunds.com>

**Subject:** Jefferies recap

SKY- sld 22k @ 32.2251

NHF- sld 10k @ 10.5461

AVYA- sld 6412 @ 19.7598

Brad Gianiny

Equity Sales Trader

Jefferies LLC

520 Madison Avenue, 2nd Floor

New York, NY 10022

W: 212-284-2291

C: 770-366-6253

<http://www.jefferies.com/salesandtradingdisclaimer/>  
<http://extwebdev.qa.jefco.com/europeandasiasalesandtradingdisclaimer/>

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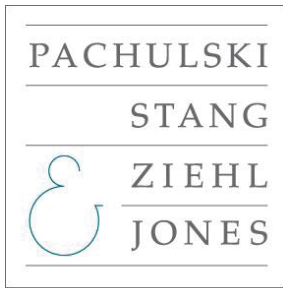
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## EXHIBIT M





LAW OFFICES  
LIMITED LIABILITY PARTNERSHIP

NEW YORK, NY  
LOS ANGELES, CA  
SAN FRANCISCO, CA  
WILMINGTON, DE

780 THIRD AVENUE  
34th FLOOR  
NEW YORK  
NEW YORK 10017-2024

TELEPHONE: 212/561 7700

FACSIMILE: 212/561 7777

LOS ANGELES  
10100 SANTA MONICA BLVD.  
13th FLOOR  
LOS ANGELES  
CALIFORNIA 90067

TELEPHONE: 310/277 6910

FACSIMILE: 310/201 0760

SAN FRANCISCO  
150 CALIFORNIA STREET  
15th FLOOR  
SAN FRANCISCO  
CALIFORNIA 94111-4500

TELEPHONE: 415/263 7000

FACSIMILE: 415/263 7010

DELAWARE  
919 NORTH MARKET STREET  
17th FLOOR  
P.O. BOX 8705  
WILMINGTON  
DELAWARE 19899-8705

TELEPHONE: 302/652 4100

FACSIMILE: 302/652 4400

WEB: [www.pszjlaw.com](http://www.pszjlaw.com)

Gregory Demo

December 24, 2020

212-561-7700  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

**Via E-mail**

James A. Wright III  
K&L Gates LLP  
State Street Financial Center  
One Lincoln Street  
Boston, Massachusetts 02111

A. Lee Hogewood III  
K&L Gates LLP  
4350 Lassiter at North Hills Ave.  
Suite 300  
Raleigh, North Carolina 27609

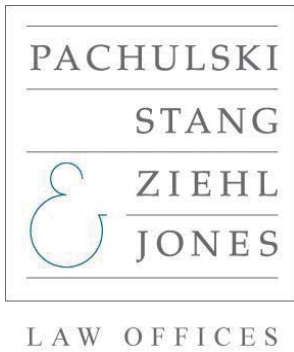
**Re: In re Highland Capital Management, L.P., Case  
No. 19-34054-sgj (Bankr. N.D. Tex)**

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the “Debtor”), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1528] (the “Motion”)<sup>1</sup> on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the “Movants”). After hearing the sworn testimony of the Movants’ witness and the arguments made on the Movants’ behalf, Judge Jernigan found that the Motion was “a very, very frivolous motion” and that your firm “wasted [her]

<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.



James A. Wright III  
A. Lee Hogewood III  
December 24, 2020  
Page 2

time.” (Transcript, 64:5-12) An order was entered denying the Motion on December 18, 2020 [D.I. 1605].

On December 22, we received the letter attached as Exhibit A (the “Letter”) from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) re-asserting almost verbatim the frivolous arguments raised in the Motion. Concurrently, we received notice that certain of the Movants’ employees would not settle trades on behalf of the CLOs that were authorized by the Debtor acting in its capacity as the CLOs’ portfolio manager. The Movants’ employees who interfered with the Debtor’s directions justified their conduct by asserting – again almost verbatim – the frivolous arguments raised in the Motion.

The Movants have caused the Debtor to incur substantial costs defending itself against the Motion and preparing to defend against the frivolous suits forecasted in the Letter. The Debtor demands that the Movants withdraw the letter by 5:00 p.m. CT on Monday, December 28, 2020, and confirm that the Movants and anyone acting on their behalf will take no further steps to interfere with the Debtor’s directions as the CLOs’ portfolio manager. If the Movants fail to timely comply with these demands, the Debtor shall seek prompt judicial relief, including seeking sanctions under Federal Rule of Bankruptcy Procedure 9011.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,



Gregory Demo

Enclosure

cc: Jeffrey Pomerantz, Esq.  
Ira Kharasch, Esq.  
John Morris, Esq.  
John J. Kane, Esq.

## Exhibit A



December 22, 2020

A. Lee Hogewood, III  
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
Gregory V. Demo  
Hayley R. Winograd  
Pachulski Stang Ziehl & Jones, LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares<sup>1</sup>:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

---

<sup>1</sup> These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

December 22, 2020

Page 2

In other cases, such companies in combination with CLO Holdco hold all, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%\*<sup>2</sup>
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%\*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%\*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

Contractually, the Debtor is obligated to maximize value for the benefit of the preference shareholders. Accordingly, we respectfully request that no further dispositions of CLO interests occur pending the confirmation hearing. While we recognize the Court denied the Advisor and Funds motion on this subject, the Court did not require liquidations occur immediately, and we reserve all rights to and remedies against the Debtor should the Debtor continue to liquidate CLO interests in contravention of this joint request. Given the Advisor, Funds, and CLO Holdco's requests, it is difficult to understand the Debtor's rationale for continued liquidations, or the benefit to the Debtor from pursuing those sales.

As you know, HCMLP's duties are set forth in the portfolio management agreements of the CLOs, which themselves have been adopted under the Investment Advisers Act of 1940 ("Advisers Act"). As HCMLP readily admits, it is: (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced those CLOs; (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan-confirmation; and (iii) adding a replacement manager as subadvisor prior to January 31, 2021. The Advisors, Funds, and CLO Holdco assert that those actions run in contravention to HCMLP's duty to maximize value for the holders of preference shares and thus what HCMLP has agreed to under the portfolio management agreement, as well as its duties under the Advisers Act, which ultimately will adversely impact the economic owners noted above.

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<sup>2</sup> CLO's marked with an asterisk (\*) appear in the foregoing list as well.

December 22, 2020

Page 3

For the forgoing and other reasons, we request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing.

Sincerely,

*A. Lee Hogewood, III*

A. Lee Hogewood, III

## EXHIBIT N



LAW OFFICES  
LIMITED LIABILITY PARTNERSHIP

NEW YORK, NY  
LOS ANGELES, CA  
SAN FRANCISCO, CA  
WILMINGTON, DE

780 THIRD AVENUE  
34th FLOOR  
NEW YORK  
NEW YORK 10017-2024

TELEPHONE: 212/561 7700

FACSIMILE: 212/561 7777

LOS ANGELES  
10100 SANTA MONICA BLVD.  
13th FLOOR  
LOS ANGELES  
CALIFORNIA 90067

TELEPHONE: 310/277 6910

FACSIMILE: 310/201 0760

SAN FRANCISCO  
150 CALIFORNIA STREET  
15th FLOOR  
SAN FRANCISCO  
CALIFORNIA 94111-4500

TELEPHONE: 415/263 7000

FACSIMILE: 415/263 7010

DELAWARE  
919 NORTH MARKET STREET  
17th FLOOR  
P.O. BOX 8705  
WILMINGTON  
DELAWARE 19899-8705

TELEPHONE: 302/652 4100

FACSIMILE: 302/652 4400

WEB: [www.pszjlaw.com](http://www.pszjlaw.com)

Gregory Demo

December 24, 2020

212-561-7700  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

**Via E-mail**

James A. Wright III  
K&L Gates LLP  
State Street Financial Center  
One Lincoln Street  
Boston, Massachusetts 02111

A. Lee Hogewood III  
K&L Gates LLP  
4350 Lassiter at North Hills Ave.  
Suite 300  
Raleigh, North Carolina 27609

**Re: In re Highland Capital Management, L.P., Case  
No. 19-34054-sgj (Bankr. N.D. Tex)**

Dear Counsel:

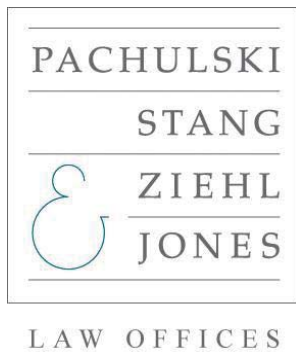
As you know, we represent Highland Capital Management, L.P. (the “Debtor”), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1528]* (the “Motion”)<sup>1</sup> on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the “Movants”). After hearing the sworn testimony of the Movants’ witness and the arguments made on the Movants’ behalf, Judge Jernigan was convinced that the Movants were in fact Mr. James Dondero seeking to disrupt

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.





James A. Wright III  
A. Lee Hogewood III  
December 24, 2020  
Page 2

HCMP's estate by using different controlled entities to accomplish his ends.

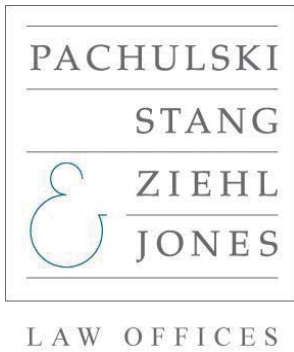
On December 23, we received the letter attached as Exhibit A (the "Letter") from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) informing us that they were seeking to terminate certain CLO management agreements for "cause." For the reasons set forth herein, among others, such action is sanctionable under the circumstances and is otherwise prohibited by the CLOs' governing documents.

First, the Movants are owned and/or controlled by Mr. Dondero. These facts were disclosed in the Movants' public filings with the Securities and Exchange Commission and confirmed by Mr. Dustin Norris's testimony at the hearing held on December 16, 2020. Consequently, the Movants' attempt to terminate the CLO management agreements violates the order entered on January 9, 2020 [D.I. 339] (the "January Order"), which prohibits Mr. Dondero from "caus[ing] any Related Entity to terminate any agreements with the Debtor." A copy of the January Order is attached as Exhibit B.

Second, "cause" does not exist to terminate the CLO management agreements. The Debtor has a duty under the Investment Advisers Act of 1940 to the CLOs, not to any specific investor in the CLOs. *See, e.g., Goldstein v. SEC*, 451 F.3d 873, 881-82 (D.C. Cir. 2006) ("[t]he adviser owes fiduciary duties only to the fund, not to the fund's investors. . ."). The Debtor has, at all times, fulfilled its statutory and contractual duties to the CLOs and will continue to do so. As counsel, you have a duty to investigate the spurious allegations in your pleadings, but you failed to do so. Your clients' desire to re-assert control over the CLOs is not evidence to the contrary.

Third, the Movants, by their own admission, consider themselves affiliates of the Debtor. Under the management agreements, affiliates of a manager cannot replace a manager, and therefore, are prohibited from removing a manager.

Please confirm to us, in writing, no later than 5:00 p.m. CT on Monday, December 28, 2020, that you are withdrawing the Letter and that the Movants and CLO Holdco, Ltd., commit not to take any



James A. Wright III  
A. Lee Hogewood III  
December 24, 2020  
Page 3

actions, either directly or indirectly, to terminate the CLO management agreements. If we do not receive such confirmation, the Debtor will seek immediate relief from the bankruptcy court, including an action for contempt for violating the January Order and sanctions under Federal Rule of Bankruptcy Procedure 9011 or otherwise.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,



Gregory Demo

Enclosure

cc: Jeffrey Pomerantz, Esq.  
Ira Kharasch, Esq.  
John Morris, Esq.  
John J. Kane, Esq.

## Exhibit A



December 23, 2020

A. Lee Hogewood, III  
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
Gregory V. Demo  
Hayley R. Winograd  
Pachulski Stang Ziehl & Jones, LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares<sup>1</sup>:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

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<sup>1</sup> These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

December 23, 2020

Page 2

In other cases, such companies in combination with CLO Holdco hold, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%<sup>2</sup>
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%\*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%\*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

In pleadings filed with the Bankruptcy Court, you asserted that one or more of the entities identified above lacked the authority to seek a replacement of the Debtor as fund manager because of the alleged affiliate status of the beneficial owners of such entities. We disagree.

Consequently, in addition to our request of yesterday, where appropriate and consistent with the underlying contractual provisions, one or more of the entities above intend to notify the relevant trustees and/or issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference for the applicable provisions of the United States Bankruptcy Code, including the automatic stay of Section 362. The basis for initiating the process for such removal includes, but is not limited to, the fact that HCMLP's duties, as set forth in the portfolio management agreements of the CLOs, are subject to the requirements of the Investment Advisers Act of 1940 ("Advisers Act"). HCMLP appears to be acting contrary to those duties under the agreements and where HCMLP is not fulfilling its duties under the portfolio management agreement it is therefore violating the Advisers Act. Thus, because HCMLP is (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced, including key investment professionals identified in the transactional documents for those CLOs (generally Mark Okada and Jim Dondero); (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan confirmation; (iii)

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<sup>2</sup> CLO's marked with an asterisk (\*) appear in the foregoing list as well.

December 23, 2020

Page 3

adding a replacement manager as subadviser prior to January 31, 2021; and (iv) for other cause, the Advisors, Funds, and CLO Holdco have concluded that they have no choice but to initiate HCMLP's removal as fund manager where such entities are contractually and legally permitted or obligated to do so.

Because the process of removal is being initiated, subject to the applicable provisions of the Bankruptcy Code, we respectfully request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing. To the extent there are CLO transactions prior to the confirmation, we intend to fully explore the business justification for doing so, as we do not believe there is any rational business reason to liquidate securities prior to that time.

Sincerely,

*A. Lee Hogewood, III*

A. Lee Hogewood, III

## Exhibit B



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 9, 2020

  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§ Related to Docket Nos. 7 & 259

**ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR  
AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE**

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "Motion"),<sup>2</sup> filed by the above-captioned debtor and debtor in possession

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



(the “Debtor”); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee’s objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) \$60,000 for each of the first three months, (ii) \$50,000 for each of the next three months, and (iii) \$30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor’s expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

**## END OF ORDER ##**

## EXHIBIT P

**From:** Scott Ellington <SEllington@HighlandCapital.com>

**To:** Michael Lynn <dmljng@gmail.com>

**Cc:** Jim Dondero <JDondero@HighlandCapital.com>, John Bonds <john@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>, "John Wilson" <john.wilson@bondsellis.com>

**Subject:** Re: Possible deal

**Date:** Sat, 12 Dec 2020 23:55:16 -0600

**Importance:** Normal

---

It will be JP Sevilla.

I will tell him that he needs to contact you first thing in morning

Sent from my iPhone

On Dec 12, 2020, at 8:44 PM, Michael Lynn wrote:

That said we MUST have a witness NOW.

Sent from my BlackBerry 10 smartphone.

---

**From:** Michael Lynn

**Sent:** Saturday, December 12, 2020 8:42 PM

**To:** Jim Dondero; John Bonds; Bryan Assink; John Wilson

**Subject:** Possible deal

---

The possible deal with the debtor went nowhere. It llos like trial.

Sent from my BlackBerry 10 smartphone.

---

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## EXHIBIT Q

**From:** Scott Ellington <SEllington@HighlandCapital.com>

**To:** Jim Dondero <JDondero@HighlandCapital.com>

**Subject:** Re: List for joint meeting

**Date:** Wed, 16 Dec 2020 13:42:51 -0600

**Importance:** Normal

---

On it.

Sent from my iPhone

On Dec 16, 2020, at 1:33 PM, Jim Dondero wrote:

I'm going to need you to provide leadership here.

Sent from my iPhone

Begin forwarded message:

**From:** Michael Lynn

**Date:** December 16, 2020 at 1:07:50 PM CST

**To:** Douglas Draper , Jim Dondero

**Subject: Re: List for joint meeting**

I can't think of any others assuming Zorada is with K&L Gates). I would contact the lawyers I have no opinion on additional contacts.

I had thought you would be representing more entities than the two trusts.

Sent from my BlackBerry 10 smartphone.

Original Message

From: Douglas Draper

Sent: Wednesday, December 16, 2020 11:13 AM

To: Michael Lynn; Jim Dondero

Subject: List for joint meeting

1) Daf john Kane attny 2) highland capital management fund advisors George Zorada 3) nexpoint

advisors Laureen Drawhorn 4) highland clo funding Mark Maloney 5) employees David Neier

Do we want to add or delete anybody from the list. Is the best route to have me call the lawyer or have a someone contact the client contact for the lawyer. Please advise

On another matter I think it would be a good idea to have a second client contact for my two clients. Give me your thoughts

Sent from my iPhone

Due to the current health crisis, the staff of Heller Draper & Horn . LLC will be working remotely and there may be some delay in responding to your email.

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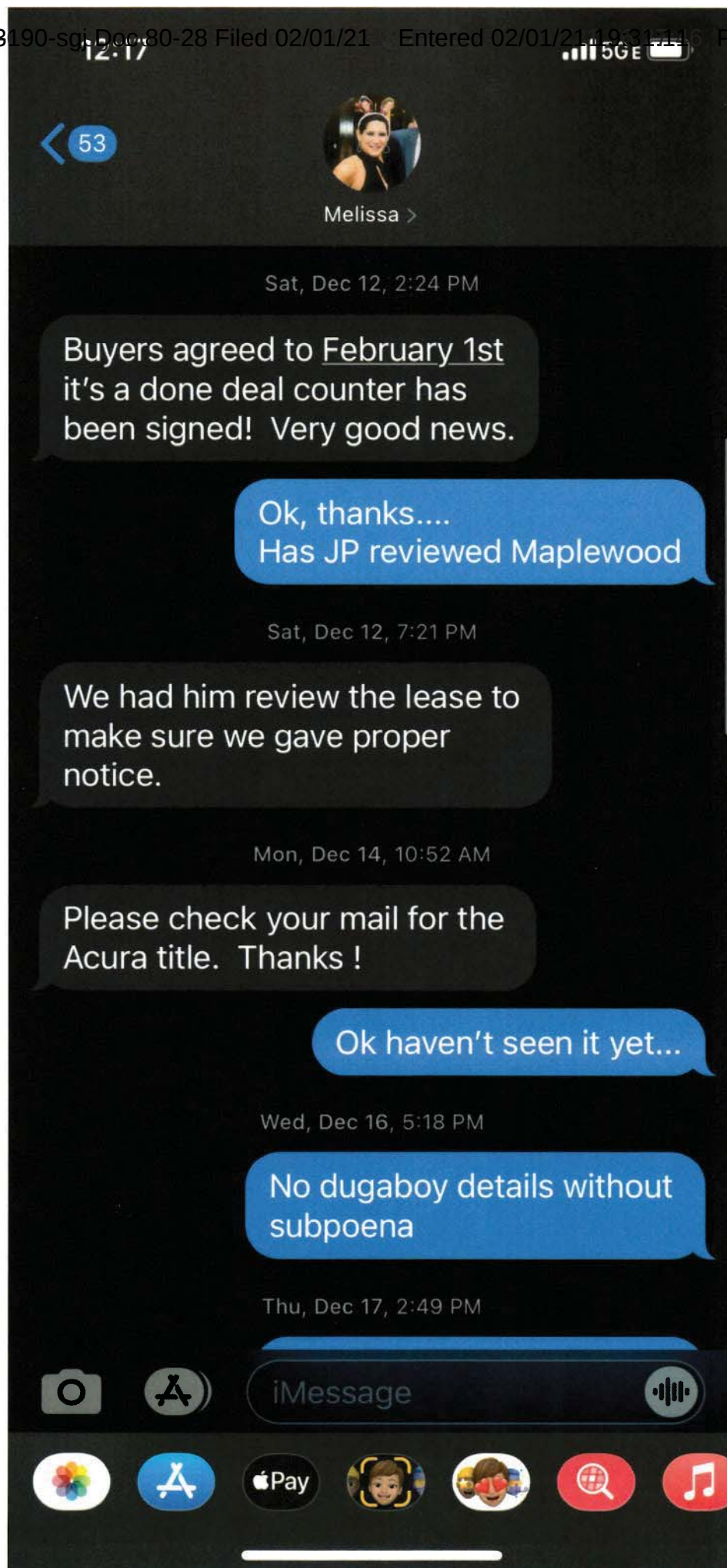
Circular 230:

Pursuant to federal tax regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any advice contained in this communication regarding federal taxes is not written or intended to be used, and cannot be used by any person as the basis for avoiding federal tax penalties under the Internal Revenue Code nor can such advice be used or referred to for the purpose of promoting marketing or recommending any entity, investment plan or arrangement. Thank You.

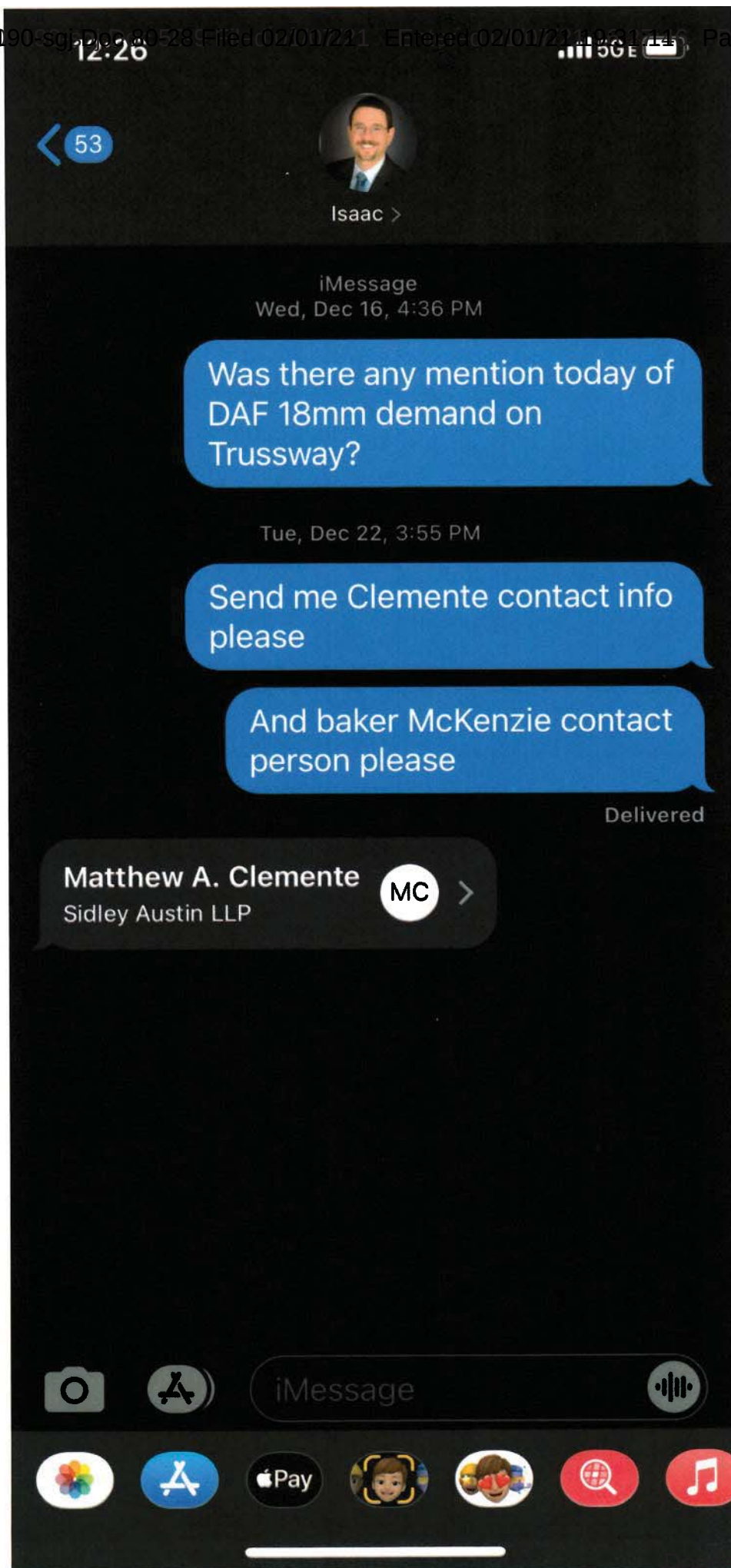
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## EXHIBIT R



## EXHIBIT S



## EXHIBIT U

---

**BONDS ELLIS EPPICH SCHAFFER JONES LLP**  
ATTORNEYS & COUNSELORS

---

D. MICHAEL LYNN | D: 817.405.6915 | MICHAEL.LYNN@BONDSELLIS.COM

---

December 29, 2020

**Via Email:**

Jeffrey Pomerantz  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Email: jpomerantz@pszjlaw.com

**Re: *In re: Highland Capital Management, L.P.* – Case No. 19-34054**

Dear Jeff:

I am in receipt of your letter sent via email on the evening of December 23, 2020.

In response to the Debtor's demand concerning Mr. Dondero's cell phone, it is our understanding that the phone Dondero is currently using was purchased by Dondero several weeks ago and that the Debtor is not paying for the use of that phone. We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor, but we are not prepared to turn it over without ensuring that the privacy of attorney-client communications by text or email is protected. We are, however, willing to have an independent third party review any items that we would designate as privileged. Our office would need to review what is on the phone to determine what we would designate as privileged before it could reach such a person. In that regard, virtually all communications made between myself and other attorneys employed by Bonds Ellis Eppich Schaffer Jones LLP have been through that phone and in many cases are preserved either as texts or emails.

Sincerely,

/s/ D. Michael Lynn

D. Michael Lynn

Cc: Jim Dondero  
John Bonds

## EXHIBIT W



**From:** Scott Ellington <SEllington@HighlandCapital.com>

**To:** Isaac Leventon <ILeventon@HighlandCapital.com>

**Subject:** Fwd: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

**Date:** Tue, 15 Dec 2020 15:47:38 -0600

**Importance:** Normal

**Attachments:** Common\_Interest\_Agreement\_-\_Dondero\_(00374777-2xBDDDE)\_(002)\_(Bonds\_Ellis\_comments).docx

---

Sent from my iPhone

Begin forwarded message:

**From:** Bryan Assink

**Date:** December 15, 2020 at 3:42:42 PM CST

**To:** Michael Lynn , Scott Ellington , John Bonds , John Wilson , Douglas Draper

**Subject:** RE: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

All,

Attached is the Common Interest Agreement with our comments.

Best,  
Bryan

---

**From:** Michael Lynn

**Sent:** Tuesday, December 15, 2020 2:53 PM

**To:** Scott Ellington ; John Bonds ; Bryan Assink ; John Wilson

**Subject:** Fw: The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

Bryan or John will review the agreement for us.

Sent from my BlackBerry 10 smartphone.

---

**From:** Deborah Hepting <[dhepting@hellerdraper.com](mailto:dhepting@hellerdraper.com)>

**Sent:** Tuesday, December 15, 2020 2:16 PM

**To:** 'Jim Dondero'; Michael Lynn

**Subject:** The Dugaboy Investment Trust and Get Good Trust - Common Interest Agreement

Please note from Douglas:

Attached please find the form agreement. Please review and advise who I should contact about being a party. Please forward for me to Scott Ellington. As you send me names, we will contact the lawyer to get this moving.

Thanks,

Douglas S. Draper  
**Heller, Draper & Horn, L.L.C.**  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130

Office: (504) 299-3300

Direct: (504) 299-3333

Fax: (504) 299-3399

Email: [ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)

Due to the current health crisis, the staff of Heller Draper & Horn . LLC will be working remotely and there may be some delay in responding to your email.

**CONFIDENTIALITY NOTICE:**

INFORMATION IN THIS MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE RECIPIENT(S) NAMED ABOVE. This message is sent by or on behalf of an attorney of the law firm Heller, Draper & Horn, L.L.C. and is intended only for the use of the individual or entity to whom it is addressed. This message contains information and/or attachments that are privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or is not the employee or agent responsible for delivering this message to the intended recipient, please do not read, copy, use or disclose this communication to anyone. If you have received this communication in error, please notify us immediately by reply e-mail or by telephone at 504-299-3300 and immediately delete this message and all of its attachments.

**Circular 230:**

Pursuant to federal tax regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any advice contained in this communication regarding federal taxes is not written or intended to be used, and cannot be used by any person as the basis for avoiding federal tax penalties under the Internal Revenue Code nor can such advice be used or referred to for the purpose of promoting marketing or recommending any entity, investment plan or arrangement. Thank You.

## EXHIBIT X

The logo for K&L GATES, featuring the text "K&L GATES" in white, sans-serif capital letters on a dark blue rectangular background.

R. Charles Miller  
202.778.9372  
chuck.miller@klgates.com

December 31, 2020

Jeffrey N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
Gregory V. Demo  
Hayley R. Winograd  
Pachulski Stang Ziehl & Jones, LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067

Re: Termination of Dondero access to office and services

Dear Counsel:

We are writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. (“HCMFA”) and NexPoint Advisors, L.P. (“NexPoint”, and together with HCMFA, the “Advisors”), and Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc. and the other retail funds advised by the Advisors (together, the “Funds”).

We have been provided a copy of your December 23, 2020 letter to Mr. Lynn regarding the termination of Mr. Dondero’s access to the office and services. We are extremely concerned that the loss of such access by Mr. Dondero could have serious effects for our clients and do unintended damage to their interests. In particular, the Funds, many of which are publicly-listed, registered with and regulated by the Securities and Exchange Commission, and have thousands of shareholders, may be economically disadvantaged to the extent that the Debtor’s actions deny Mr. Dondero the access and ability to provide the necessary and contractual services to them.

Mr. Dondero is portfolio manager and/or officer of various entities which occupy space in the premises and have shared access to email accounts, computers and other relevant material pursuant to the terms of various shared services agreements (the “Agreements”), which the Debtor has not rejected and for which such entities pay the Debtor significant fees. We are not aware of any provisions under the Agreements which give the Debtor the power to determine which employees of NexPoint Advisors,

December 30, 2020

Page 2

L.P. and other entities may enter the premises or have access to the email and related systems. If there are, please direct us to those provisions. The Debtor has given written notice to the Advisors and the Funds that the Agreements will remain in place until January 31, 2021, at which time they will terminate, and our clients have been and are acting in reliance on those written representations from the Debtor.

Mr. Dondero is the lead (and in some cases the sole) portfolio manager for certain of the Funds. He is intimately involved in the day-to-day operations and investment decisions regarding those Funds and in the operations of the Advisors. We believe that denying Mr. Dondero access to the premises, email and related systems will materially and adversely affect the function and reputation of the Advisors and the Funds. We ask that the Debtor reconsider its position refusing Mr. Dondero necessary access to the email, operating systems and building required to serve the Funds and the Advisors.

Sincerely,

/s R. Charles Miller

R. Charles Miller

Cc:

D. Michael Lynn (via email)

## EXHIBIT Y

**From:** Grant Scott <[gscott@scottlawgroupllc.com](mailto:gscott@scottlawgroupllc.com)>

**To:** Scott Ellington <[SEllington@HighlandCapital.com](mailto:SEllington@HighlandCapital.com)>

**Subject:** FW: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

**Date:** Wed, 23 Dec 2020 15:02:50 +0000

**Inline-Images:** image001.jpg

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FYI, now

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**From:** John J. Kane

**Sent:** Wednesday, December 23, 2020 9:58 AM

**To:** Grant Scott ; [dsauter@nexpointadvisors.com](mailto:dsauter@nexpointadvisors.com); A. Lee Hogewood

**Cc:** Brian Clark

**Subject:** Re: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

866-399-4184

Conf Id: 5549564

Sent from my iPhone

On Dec 23, 2020, at 8:52 AM, Grant Scott <[gscott@scottlawgroupllc.com](mailto:gscott@scottlawgroupllc.com)> wrote:

FYI

---

**From:** DC Sauter <[DSauter@NexPointadvisors.com](mailto:DSauter@NexPointadvisors.com)>

**Sent:** Wednesday, December 23, 2020 9:51 AM

**To:** Grant Scott <[gscott@scottlawgroupllc.com](mailto:gscott@scottlawgroupllc.com)>

**Cc:** Jason Post <[JPost@NexpointAdvisors.com](mailto:JPost@NexpointAdvisors.com)>; Hogewood, III, A. Lee

<[A.Lee.HogewoodIII@klgates.com](mailto:A.Lee.HogewoodIII@klgates.com)>

**Subject:** RE: It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

Yes. Copied here. Is there a dial-in?

D.C. Sauter

O: 972.628.4117 | C: 469.877.6440

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**From:** Grant Scott <[gscott@scottlawgroupllc.com](mailto:gscott@scottlawgroupllc.com)>

**Sent:** Wednesday, December 23, 2020 8:48 AM

**To:** DC Sauter <[DSauter@NexPointadvisors.com](mailto:DSauter@NexPointadvisors.com)>

**Subject:** It appears Jim will be available for a 9AM CT call. Can the K&L people make it?

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**NEXPOINT**



## **EXHIBIT Z**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: )  
 ) CHAPTER 11  
HIGHLAND CAPITAL )  
MANAGEMENT, L.P., ) CASE NO.  
 ) 19-34054-sgj11  
Debtor. )

\_\_\_\_\_)  
HIGHLAND CAPITAL )  
MANAGEMENT, L.P., )  
 ) Adversary Proceeding  
Plaintiff, ) No. 20-3190-sgj11

v. )

)  
JAMES D. DONDERO, )  
 )  
Defendant. )  
\_\_\_\_\_)

REMOTE VIDEO-RECORDED DEPOSITION OF

JAMES D. DONDERO

TUESDAY, JANUARY 5, 2021

REPORTED BY:

MICHAEL E. MILLER, FAPR, RDR, CRR

JOB NO. 188154

<p>Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Tuesday, January 5, 2021</p> <p>6 9:50 a.m. CST</p> <p>7</p> <p>8</p> <p>9 REMOTE ORAL VIDEO-RECORDED DEPOSITION</p> <p>10 OF JAMES D. DONDERO, held via Zoom conference</p> <p>11 pursuant to the Federal Rules of Civil Procedure</p> <p>12 before Michael E. Miller, Fellow of the Academy</p> <p>13 of Professional Reporters, Registered Diplomate</p> <p>14 Reporter, Certified Realtime Reporter and Notary</p> <p>15 Public in and for the State of Texas.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>4 Attorneys for Debtor</p> <p>5 780 Third Avenue</p> <p>6 New York, NY 10017</p> <p>7 BY: JOHN MORRIS, ESQ.</p> <p>8 HAYLEY WINOGRAD, ESQ.</p> <p>9 JEFFREY POMERANTZ, ESQ.</p> <p>10 GREGORY DEMO, ESQ.</p> <p>11 IRA KHARASCH, ESQ.</p> <p>12</p> <p>13 LATHAM &amp; WATKINS</p> <p>14 Attorney For UBS</p> <p>15 885 Third Avenue</p> <p>16 New York, NY 10022</p> <p>17 BY: SHANNON MCLAUGHLIN, ESQ.</p> <p>18 ZACHARY PROULX, ESQ.</p> <p>19</p> <p>20 JENNER &amp; BLOCK</p> <p>21 Attorney for Redeemer Committee</p> <p>22 353 North Clark Street</p> <p>23 Chicago, IL 60654</p> <p>24 BY: TERRI MASCHERIN, ESQ.</p> <p>25</p>
<p>Page 4</p> <p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3 SIDLEY AUSTIN</p> <p>4 Attorneys For the Creditors Committee</p> <p>5 2021 McKinney Avenue</p> <p>6 Dallas, TX 75201</p> <p>7 BY: PENNY REID, ESQ.</p> <p>8 PAIGE MONTGOMERY, ESQ.</p> <p>9 MATTHEW CLEMENTE, ESQ.</p> <p>10 ALYSSA RUSSELL, ESQ.</p> <p>11</p> <p>12 KING &amp; SPALDING</p> <p>13 Attorney for Highland CLO Funding, Ltd.</p> <p>14 500 West 2nd Street</p> <p>15 Austin, TX 78701</p> <p>16 BY: REBECCA MATSUMURA, ESQ.</p> <p>17</p> <p>18 BONDS ELLIS EPPICH SCHAFFER JONES</p> <p>19 Attorneys for James Dondero</p> <p>20 420 Throckmorton Street</p> <p>21 Fort Worth, TX 76102</p> <p>22 BY: JOHN BONDS, ESQ.</p> <p>23 BRYAN ASSINK, ESQ.</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3 DEBEVOISE &amp; PLIMPTON</p> <p>4 Attorneys for HarbourVest Partners</p> <p>5 919 Third Avenue</p> <p>6 New York, NY 10022</p> <p>7 BY: ERICA WEISGERBER, ESQ.</p> <p>8</p> <p>9 CARLYON CICA CHARTERED</p> <p>10 Attorneys for Integrated Financial</p> <p>11 Associates Inc.</p> <p>12 265 East Warm Springs Road</p> <p>13 Las Vegas, NV 89119</p> <p>14 BY: CANDACE CARLYON, ESQ.</p> <p>15</p> <p>16 ALSO PRESENT:</p> <p>17 La Asia Canty, Paralegal</p> <p>18 Pachulski Stang Ziehl &amp; Jones LLP</p> <p>19</p> <p>20 VIDEOGRAPHER:</p> <p>21 Rick Richey, TSG Reporting Inc.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1</p> <p>2</p> <p>3 PROCEEDINGS</p> <p>4 January 5, 2021, 9:50 a.m. CST</p> <p>5</p> <p>6 THE VIDEOGRAPHER: Good morning,</p> <p>7 ladies and gentlemen. My name is Rick Richey.</p> <p>8 I'm a legal videographer in association with</p> <p>9 TSG Reporting Inc.</p> <p>10 Due to the severity of the COVID-19</p> <p>11 and following the practice of social distancing,</p> <p>12 I will not be in the same room with the witness.</p> <p>13 Instead, I will record this videotaped deposition</p> <p>14 remotely.</p> <p>15 The court reporter, Mike Miller, also</p> <p>16 will not be in the same room and will swear the</p> <p>17 witness remotely.</p> <p>18 Do all parties stipulate to the</p> <p>19 validity of this video recording and remote</p> <p>20 swearing and that it will be admissible in the</p> <p>21 courtroom as if it had been taken following Rule</p> <p>22 30 of the Federal Rules of Civil Procedure and</p> <p>23 the state rules where the case is pending?</p> <p>24 Do all agree?</p> <p>25 MR. MORRIS: Yes.</p>	<p style="text-align: right;">Page 7</p> <p>1</p> <p>2 MR. BONDS: Yes.</p> <p>3 MR. MORRIS: Does anyone not agree?</p> <p>4 (Pause.)</p> <p>5 MR. MORRIS: Having heard nothing,</p> <p>6 let's proceed. Thank you.</p> <p>7 THE VIDEOGRAPHER: This will be the</p> <p>8 start of Media No. 1 in the video-recorded</p> <p>9 deposition of James Dondero. Today's date is</p> <p>10 January 5th, 2021. It's 9:52 a.m. Central</p> <p>11 Standard Time.</p> <p>12 The case is In re Highland Capital</p> <p>13 Management LP, Debtor, Chapter 11, Case</p> <p>14 No. 19-34054-sgj11 in the United States</p> <p>15 Bankruptcy Court for the Northern District of</p> <p>16 Texas, Dallas Division.</p> <p>17 The attorneys' appearances have</p> <p>18 already been noted on the steno record, so would</p> <p>19 the court reporter please swear the witness.</p> <p>20 MR. BONDS: Wait just one second.</p> <p>21 There's an adversary proceeding that this case is</p> <p>22 actually – or this deposition is actually being</p> <p>23 taken in. It's 20-03190-sgj. Thank you.</p> <p>24 ///</p> <p>25 ///</p>
<p style="text-align: right;">Page 8</p> <p>1 J. DONDERO</p> <p>2</p> <p>3 JAMES D. DONDERO,</p> <p>4 having been duly sworn,</p> <p>5 testified as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Good morning, Mr. Dondero. Can you</p> <p>11 hear me okay?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. My name is John Morris from</p> <p>14 Pachulski Stang Ziehl &amp; Jones, counsel for the</p> <p>15 debtor.</p> <p>16 Where are you located this morning,</p> <p>17 sir?</p> <p>18 A. Highland Capital Management's</p> <p>19 conference room, same as last time.</p> <p>20 Q. Is there anybody in the room with you</p> <p>21 right now?</p> <p>22 A. No.</p> <p>23 Q. Do you have a telephone with you?</p> <p>24 A. Yes.</p> <p>25 Q. Is the phone off?</p>	<p style="text-align: right;">Page 9</p> <p>1 J. DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Are you aware that the debtor sent a</p> <p>4 letter to your lawyers instructing you not to be</p> <p>5 on the premises after December 31st, 2020?</p> <p>6 A. Yes.</p> <p>7 Q. Did you get the debtor's permission</p> <p>8 to enter the premises this morning?</p> <p>9 A. Implicitly for this depo, I believe.</p> <p>10 Q. Okay. Did you get any explicit</p> <p>11 consent or approval for you to be in the offices</p> <p>12 this morning?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Did you ask or did anybody on your</p> <p>15 behalf ask the debtors if you could participate</p> <p>16 in today's deposition at the Highland offices?</p> <p>17 A. I don't know.</p> <p>18 Q. You're not aware of that, right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. John Bonds is defending you</p> <p>21 today; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And he's at the Bonds Ellis firm,</p> <p>24 right?</p> <p>25 A. Yes.</p>

<p>Page 10</p> <p>1 J. DONDERO</p> <p>2 Q. And the Bonds Ellis firms represents</p> <p>3 you in your individual capacity, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Is there any other law firm that</p> <p>6 represents you in your individual capacity in the</p> <p>7 Highland bankruptcy or in the adversary</p> <p>8 proceeding?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Okay. Does the Bonds Ellis firm</p> <p>11 represent any entity in which you have an</p> <p>12 ownership or control interest, or do they just</p> <p>13 represent you in your individual capacity?</p> <p>14 A. I don't know for sure.</p> <p>15 Q. Okay. But as you sit here right now,</p> <p>16 do you have any reason to believe that the Bonds</p> <p>17 Ellis firm represents anybody other than you in</p> <p>18 your individual capacity in connection with the</p> <p>19 bankruptcy case?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. You understand that we're here</p> <p>22 today for your deposition, right?</p> <p>23 A. Yes.</p> <p>24 Q. And do you understand that today's</p> <p>25 deposition is being taken in connection with the</p>	<p>Page 11</p> <p>1 J. DONDERO</p> <p>2 debtor's motion for – (audio malfunction) –</p> <p>3 (Clarification requested by the</p> <p>4 stenographer.)</p> <p>5 MR. MORRIS: I'll ask it again.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Mr. Dondero, do you understand that</p> <p>8 today's deposition is being taken in connection</p> <p>9 with the debtor's motion for preliminary</p> <p>10 injunction against you?</p> <p>11 A. Yes.</p> <p>12 Q. Do you intend to participate in the</p> <p>13 hearing on the debtor's motion for preliminary</p> <p>14 injunction?</p> <p>15 MR. BONDS: Objection, form.</p> <p>16 MR. MORRIS: You can answer.</p> <p>17 A. I don't know.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Do you intend to make – do you</p> <p>20 intend to testify at the debtor's hearing for</p> <p>21 preliminary injunction?</p> <p>22 MR. BONDS: Objection, form.</p> <p>23 A. I don't know.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. You may or you may not; is that</p>
<p>Page 12</p> <p>1 J. DONDERO</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Are you on any drugs or any</p> <p>5 medication right now?</p> <p>6 A. No.</p> <p>7 Q. Is there anything that you're aware</p> <p>8 of that might affect your memory today?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of anything that would</p> <p>11 prevent you from testifying competently today to</p> <p>12 the best of your ability?</p> <p>13 A. No.</p> <p>14 Q. You understand that you're under oath</p> <p>15 right now?</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware that on December 10th</p> <p>18 the debtor obtained a temporary restraining order</p> <p>19 against you?</p> <p>20 A. Roughly.</p> <p>21 Q. Okay. Did you ever personally read a</p> <p>22 copy of the temporary restraining order?</p> <p>23 A. No.</p> <p>24 Q. So you've never seen the order</p> <p>25 itself; is that right?</p>	<p>Page 13</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. Correct.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you have an understanding of what</p> <p>6 the order restrains you from doing?</p> <p>7 A. Just in the most general sense.</p> <p>8 Q. Tell me your understanding of what</p> <p>9 the temporary order restrains you from doing.</p> <p>10 A. Talking to the independent board</p> <p>11 directly or talking directly to Highland</p> <p>12 employees.</p> <p>13 Q. Is there any other aspect of the</p> <p>14 temporary restraining order that you're aware of</p> <p>15 that would otherwise constrain or restrain your</p> <p>16 conduct?</p> <p>17 A. Those are the points I remember.</p> <p>18 Q. Do you recall that before the Court</p> <p>19 entered the temporary restraining order, it held</p> <p>20 a hearing to consider the debtor's request?</p> <p>21 A. I – I don't know.</p> <p>22 Q. Did you listen to the hearing?</p> <p>23 A. No.</p> <p>24 Q. Did you read a transcript of the</p> <p>25 hearing?</p>

<p>Page 14</p> <p>1 J. DONDERO</p> <p>2 A. No.</p> <p>3 Q. Do you respect the Court's authority</p> <p>4 in this case?</p> <p>5 MR. BONDS: Objection, form.</p> <p>6 A. Yes.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Is there any particular reason why</p> <p>9 you didn't take the time to read the Court's</p> <p>10 temporary restraining order that was entered</p> <p>11 against you?</p> <p>12 A. No.</p> <p>13 Q. James Seery is a member of the board</p> <p>14 of Strand Advisors, the debtor's general partner,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And you've been aware of that since</p> <p>18 at least last January, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you're also aware that Mr. Seery</p> <p>21 is the debtor's CEO and CRO, right?</p> <p>22 A. Yes.</p> <p>23 Q. And you've been aware of that since</p> <p>24 last July, correct?</p> <p>25 A. Yes.</p>	<p>Page 15</p> <p>1 J. DONDERO</p> <p>2 Q. Did you ever review the declaration</p> <p>3 that Mr. Seery submitted in connection with the</p> <p>4 debtor's motion for a temporary restraining order</p> <p>5 against you?</p> <p>6 MR. BONDS: Objection, form.</p> <p>7 A. No.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Do you know what Mr. Seery alleged in</p> <p>10 his declaration -- withdrawn.</p> <p>11 Do you know the substance of what</p> <p>12 Mr. Seery alleged in his declaration in support</p> <p>13 of the debtor's motion for the TRO?</p> <p>14 A. No.</p> <p>15 Q. Did you care that the debtor was</p> <p>16 seeking a TRO against you?</p> <p>17 A. I didn't think about it.</p> <p>18 Q. Have you thought about it since the</p> <p>19 order was entered?</p> <p>20 A. Not really.</p> <p>21 Q. Okay. You didn't submit a</p> <p>22 declaration of your own in opposition of the</p> <p>23 motion for TRO, right?</p> <p>24 A. I don't know.</p> <p>25 Q. You don't recall signing anything, do</p>
<p>Page 16</p> <p>1 J. DONDERO</p> <p>2 you?</p> <p>3 A. I've signed a lot of things, but</p> <p>4 I'm -- I don't recall an opposition.</p> <p>5 Q. Let's talk about some of the events</p> <p>6 that led to the entry of the TRO.</p> <p>7 The debtor serves -- (audio</p> <p>8 malfunction) --</p> <p>9 (Clarification requested by the</p> <p>10 stenographer.)</p> <p>11 THE WITNESS: I didn't touch the</p> <p>12 microphone at this end and it's six inches or</p> <p>13 eight inches from my mouth.</p> <p>14 MR. MORRIS: Yeah, let's try again,</p> <p>15 Mr. Dondero. Thank you.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. The debtor serves as the portfolio</p> <p>18 manager for certain collateralized loan</p> <p>19 obligation vehicles; isn't that right?</p> <p>20 A. I don't want to testify to that.</p> <p>21 Q. Does the -- does the debtor manage</p> <p>22 CLOs?</p> <p>23 MR. BONDS: Objection, form.</p> <p>24 MR. MORRIS: Withdrawn.</p> <p>25 ///</p>	<p>Page 17</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Can we agree that CLO stands for</p> <p>4 collateralized loaning obligations?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And does the debtor -- is the</p> <p>7 debtor party to certain contracts that gives it</p> <p>8 the right and responsibility to manage certain</p> <p>9 CLO vehicles?</p> <p>10 MR. BONDS: Objection, form.</p> <p>11 MR. MORRIS: You can answer.</p> <p>12 A. Yes.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. And you're aware of that because you</p> <p>15 personally signed some of those contracts and</p> <p>16 agreements, right?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay. NexPoint Advisors LP, are you</p> <p>19 familiar with that firm?</p> <p>20 A. Yes.</p> <p>21 Q. That's an advisory firm; is that</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And we'll just refer to that as</p> <p>25 NexPoint; is that okay?</p>

<p>Page 18</p> <p>1 J. DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. You have a direct or indirect</p> <p>4 economic or ownership interest in NexPoint,</p> <p>5 correct?</p> <p>6 MR. BONDS: Objection, form.</p> <p>7 MR. MORRIS: You can answer.</p> <p>8 A. Yes.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. You're the president of NexPoint,</p> <p>11 correct?</p> <p>12 A. I believe so.</p> <p>13 Q. And you own NexPoint's general</p> <p>14 partner; is that right?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know who owns NexPoint's</p> <p>17 general partner?</p> <p>18 A. No.</p> <p>19 Q. As the president of NexPoint, is it</p> <p>20 fair to say that you control that entity?</p> <p>21 A. Generally.</p> <p>22 Q. Highland Capital Management Fund</p> <p>23 Advisors LP, are you familiar with that firm?</p> <p>24 A. Yes.</p> <p>25 Q. And that's also an advisory firm,</p>	<p>Page 19</p> <p>1 J. DONDERO</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And we'll refer to that firm as Fund</p> <p>5 Advisors; is that fair?</p> <p>6 A. Sure.</p> <p>7 Q. And we'll refer to Fund Advisors and</p> <p>8 NexPoint together just as "the advisors"; is that</p> <p>9 fair?</p> <p>10 A. I think you should be more specific</p> <p>11 than that, but –</p> <p>12 Q. Okay. I apologize. Are you</p> <p>13 finished?</p> <p>14 If at any time I ask a question and</p> <p>15 you don't understand, will you let me know that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. You have a direct or indirect</p> <p>18 economic or ownership interest in Fund Advisors,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. You're the president of Fund</p> <p>22 Advisors; is that true?</p> <p>23 A. I believe so.</p> <p>24 Q. And you own Fund Advisors' general</p> <p>25 partner; is that right?</p>
<p>Page 20</p> <p>1 J. DONDERO</p> <p>2 A. I don't believe I own as much of it</p> <p>3 as I own of NexPoint, but I don't know the</p> <p>4 numbers.</p> <p>5 Q. Okay. As one of the two beneficial</p> <p>6 owners of Fund Advisors and as the president of</p> <p>7 Fund Advisors, is it fair to say that you control</p> <p>8 that entity?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And Fund Advisors and NexPoint</p> <p>11 manage certain investment funds; is that right?</p> <p>12 A. I'm sorry, I missed the point of that</p> <p>13 question.</p> <p>14 Q. Didn't hear? Okay.</p> <p>15 Fund Advisors, which we've talked</p> <p>16 about, and NexPoint, which we've talked about,</p> <p>17 those two entities manage certain investment</p> <p>18 funds; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And one of the investment funds that</p> <p>21 the advisors manage is Highland Income Fund. Do</p> <p>22 I have that right?</p> <p>23 A. Yes. I'm not sure which fund that</p> <p>24 is, but yes, that's – that's one of them.</p> <p>25 Q. Are you the portfolio manager of the</p>	<p>Page 21</p> <p>1 J. DONDERO</p> <p>2 Highland Income Fund?</p> <p>3 A. I believe so.</p> <p>4 Q. Do you hold any titles at the</p> <p>5 Highland Income Fund other than portfolio</p> <p>6 manager?</p> <p>7 MR. BONDS: To the extent you know.</p> <p>8 Don't speculate.</p> <p>9 A. I don't – I don't know. I know I'm</p> <p>10 portfolio manager on virtually all of the funds.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Is there any fund that you're not the</p> <p>13 portfolio manager for that you're aware of?</p> <p>14 A. I don't know.</p> <p>15 Q. Are you the portfolio manager of</p> <p>16 NexPoint Capital Inc.?</p> <p>17 A. If that name refers to a fund, I</p> <p>18 believe so.</p> <p>19 Q. Okay. You're not sure if that refers</p> <p>20 to a fund?</p> <p>21 A. There's a fund with the symbol NHF.</p> <p>22 If that's the name – which I don't think you</p> <p>23 have the exact name. If that's the name of it,</p> <p>24 then I believe – I believe I'm the portfolio</p> <p>25 manager. The name that you just gave sounded</p>

<p>Page 22</p> <p>1 J. DONDERO</p> <p>2 more like a holding company name or a subsidiary</p> <p>3 name for NexPoint. If it's not a fund, I'm not</p> <p>4 the portfolio manager. If it is a fund, I</p> <p>5 believe I am.</p> <p>6 Q. Okay. Do you hold -- are you</p> <p>7 familiar with an entity called NexPoint</p> <p>8 Capital Inc.?</p> <p>9 A. No.</p> <p>10 Q. Okay. How about NexPoint Strategic</p> <p>11 Opportunities Fund, is that a fund that is</p> <p>12 managed by one of the advisors?</p> <p>13 A. I believe that's the name for NHF.</p> <p>14 That's what I thought you were referring to.</p> <p>15 That's the one that's a fund, and that's the one</p> <p>16 that I'm portfolio manager on.</p> <p>17 Q. Okay. Do you hold any titles at</p> <p>18 NexPoint Strategic Opportunity Fund other than</p> <p>19 portfolio manager?</p> <p>20 A. I don't know.</p> <p>21 Q. The advisors caused each of the funds</p> <p>22 to invest in certain CLOs that are managed by the</p> <p>23 debtor, right?</p> <p>24 MR. BONDS: To the extent you know.</p> <p>25 Don't speculate.</p>	<p>Page 23</p> <p>1 J. DONDERO</p> <p>2 MR. MORRIS: John, if there's an</p> <p>3 objection, I welcome it. If there's a direction</p> <p>4 not to answer, I welcome it. But what I don't</p> <p>5 welcome is guiding the witness. If he doesn't</p> <p>6 remember, he's done this so many times, he knows</p> <p>7 what he's doing.</p> <p>8 You want me to ask the question</p> <p>9 again, Mr. Dondero?</p> <p>10 THE WITNESS: Please.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. The two advisors that we talked</p> <p>13 about, they manage funds, right?</p> <p>14 A. Yes.</p> <p>15 Q. And those funds have invested in</p> <p>16 certain CLOs that are managed by the debtor,</p> <p>17 correct?</p> <p>18 A. The problem I have with that question</p> <p>19 and the part that I don't want to testify as</p> <p>20 agreeing to or acknowledging is that the debtor</p> <p>21 manages those CLOs, because I won't testify to</p> <p>22 the debtor being in good standing, and I won't</p> <p>23 testify to the debtor not being in default, and I</p> <p>24 won't testify to the debtor having the capability</p> <p>25 to manage those CLOs --</p>
<p>Page 24</p> <p>1 J. DONDERO</p> <p>2 Q. Will you -- I'm sorry to interrupt.</p> <p>3 Go ahead.</p> <p>4 A. No, I mean, that's -- so I won't -- I</p> <p>5 won't testify affirmatively to the second half of</p> <p>6 that question.</p> <p>7 Q. Okay. But you will admit, won't you,</p> <p>8 that the debtor has -- is party to contracts that</p> <p>9 give it the right to manage CLOs in which the</p> <p>10 advisors caused the funds to invest, right?</p> <p>11 MR. BONDS: Objection, form.</p> <p>12 MR. MORRIS: You can answer.</p> <p>13 A. The beginning and end of what I want</p> <p>14 to testify to is that the advisor is parties --</p> <p>15 party to contracts. The contracts have --</p> <p>16 provide the ability to manage assets in the CLO</p> <p>17 subject to a bunch of different things, subject</p> <p>18 to not being in default, subject to the ability,</p> <p>19 subject to the capability and being registered</p> <p>20 advisor, et cetera, et cetera.</p> <p>21 I don't want to have any testimony</p> <p>22 that implies that the advisor is in good standing</p> <p>23 or able or capable of managing those CLOs or that</p> <p>24 Jim Seery is even an investment professional.</p> <p>25 ///</p>	<p>Page 25</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. I think I understand.</p> <p>4 When you used the word "advisor" in</p> <p>5 your last answer, you were referring to the</p> <p>6 debtor; is that right?</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. It's the debtor that has -- let me</p> <p>10 try again.</p> <p>11 It's the debtor that has the</p> <p>12 contracts with the CLO, right?</p> <p>13 A. Yes.</p> <p>14 Q. But it's your contention that the</p> <p>15 debtor is in default and that Mr. Seery and the</p> <p>16 debtor otherwise don't have the capability to</p> <p>17 manage the CLOs. That's what you're saying,</p> <p>18 right?</p> <p>19 A. I don't want to argue, and it's for</p> <p>20 the lawyers and the Court to decide, but I don't</p> <p>21 want to be affirmatively acknowledging that</p> <p>22 Seery's an investment professional. I don't want</p> <p>23 to be affirmatively acknowledging that he has any</p> <p>24 employees and staff when he's told them all</p> <p>25 they're being terminated in the next few weeks.</p>



<p style="text-align: right;">Page 26</p> <p>1 J. DONDERO</p> <p>2 I don't want to acknowledge that he</p> <p>3 is in compliance and can operate those contracts</p> <p>4 if I believe those contracts are in default</p> <p>5 because, A, the advisor's in bankruptcy, and B,</p> <p>6 none of the key man provisions are being adhered</p> <p>7 to by the advisor.</p> <p>8 I don't want to in any form or</p> <p>9 fashion acknowledge or represent or somehow be</p> <p>10 twisted into testifying that he is in good</p> <p>11 standing or has the ability to manage those CLOs.</p> <p>12 It may be found by somebody that he is, but I</p> <p>13 don't want to be in any way inferred to be</p> <p>14 sanctioning it.</p> <p>15 Q. Okay. Are you aware – have any of</p> <p>16 the contracts pursuant to which the CLOs and the</p> <p>17 debtor are the parties, have any of those</p> <p>18 contracts been terminated, to the best of your</p> <p>19 knowledge, since the petition date?</p> <p>20 A. I believe they're subject to stays,</p> <p>21 among other things, but I'm not – I'm not a</p> <p>22 lawyer.</p> <p>23 Q. Has anybody sought to lift the stay</p> <p>24 in order to terminate the contracts, to the best</p> <p>25 of your knowledge?</p>	<p style="text-align: right;">Page 27</p> <p>1 J. DONDERO</p> <p>2 A. I don't know where – I don't know.</p> <p>3 Q. Has any of the CLOs ever contended</p> <p>4 that the debtor was in breach in their agreement?</p> <p>5 A. I believe the beneficial holders</p> <p>6 have.</p> <p>7 Q. I understand that –</p> <p>8 A. But I don't know – I don't know if</p> <p>9 the CLOs have.</p> <p>10 Q. Okay. I'm asking you a different</p> <p>11 question, and just answer my question.</p> <p>12 To the best of your knowledge, has</p> <p>13 any CLO contended that the debtor is in breach of</p> <p>14 any of the agreements that they have between</p> <p>15 them?</p> <p>16 MR. BONDS: Objection, form.</p> <p>17 A. I don't know.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. You're not aware of any such</p> <p>20 contention, right?</p> <p>21 A. I don't know.</p> <p>22 Q. You're not aware of any contention by</p> <p>23 the CLOs that the debtor is in default under any</p> <p>24 CLO contract, correct?</p> <p>25 MR. BONDS: Objection, form.</p>
<p style="text-align: right;">Page 28</p> <p>1 J. DONDERO</p> <p>2 A. I don't know regarding the CLOs.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Did you ever ask them? Withdrawn.</p> <p>5 Did you ever ask anybody on behalf of</p> <p>6 the CLOs whether they were going to declare a</p> <p>7 default under the CLO management agreements?</p> <p>8 MR. BONDS: Objection, form.</p> <p>9 A. I don't know.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. You don't know if you asked? I'm</p> <p>12 just asking you if you ever asked the question.</p> <p>13 A. Not of the CLOs. Those questions</p> <p>14 were asked regarding the beneficial owners, and I</p> <p>15 think the beneficial owners did that, but I</p> <p>16 didn't have direct knowledge or contact with the</p> <p>17 CLOs.</p> <p>18 Q. Okay. And the beneficial owners are</p> <p>19 not parties to the CLO management agreements</p> <p>20 between the CLOs and the debtor, correct?</p> <p>21 MR. BONDS: Objection, form.</p> <p>22 A. I don't want to draw a legal</p> <p>23 conclusion of the rights of the beneficial owners</p> <p>24 and the people who have the risk and the people</p> <p>25 who have the ultimate decision authority whether</p>	<p style="text-align: right;">Page 29</p> <p>1 J. DONDERO</p> <p>2 or not they can be circumvented or ignored by an</p> <p>3 intermediate nonfinancial – nonfinancially</p> <p>4 interested party. I don't want to – I don't</p> <p>5 want to speculate on that.</p> <p>6 MR. MORRIS: Okay. I move to strike.</p> <p>7 And I'm not asking for a legal</p> <p>8 conclusion; I'm asking for your understanding.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Is it your understanding that</p> <p>11 beneficial owners are parties to the CLO</p> <p>12 management agreements between the debtor and the</p> <p>13 CLOs?</p> <p>14 MR. BONDS: Objection to form.</p> <p>15 MR. MORRIS: You can answer.</p> <p>16 A. I think that asks for a legal</p> <p>17 conclusion.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. It does not. I'm asking you as a</p> <p>20 factual matter based on your understanding as the</p> <p>21 portfolio manager of the funds and the president</p> <p>22 of the advisors who made these investments. I'm</p> <p>23 asking you –</p> <p>24 MR. BONDS: Objection, form.</p> <p>25 ///</p>

<p>Page 30</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. – in that capacity.</p> <p>4 In that capacity, do you have any</p> <p>5 understanding that the beneficial owners are</p> <p>6 parties to the CLO management agreements between</p> <p>7 the debtor and the CLOs?</p> <p>8 MR. BONDS: Objection, form.</p> <p>9 A. My understanding is that the</p> <p>10 beneficial owner should always be considered.</p> <p>11 MR. MORRIS: Okay. I move to strike.</p> <p>12 I'm not asking you whether they should be</p> <p>13 considered.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. I'm asking you very specifically</p> <p>16 whether you believe that they are parties to the</p> <p>17 contract.</p> <p>18 MR. BONDS: Objection, form, asked</p> <p>19 and answered.</p> <p>20 A. Yeah, I believe you're asking me for</p> <p>21 a legal conclusion, and I won't give one.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: La Asia, can we please</p> <p>25 put up Exhibit 1. Let's share the screen and put</p>	<p>Page 31</p> <p>1 J. DONDERO</p> <p>2 up Exhibit 1.</p> <p>3 (Dondero Deposition Exhibit 1</p> <p>4 marked.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Mr. Dondero, I appreciate that it's</p> <p>7 difficult to do this remotely, and as we</p> <p>8 discussed last time, the one thing that I'm</p> <p>9 certainly not doing today is playing gotcha with</p> <p>10 documents.</p> <p>11 So I'm going to put documents up on</p> <p>12 the screen from time to time, and to the extent</p> <p>13 that you think you need to read more of the</p> <p>14 document in order to have full context, will you</p> <p>15 let me know that?</p> <p>16 A. Sure.</p> <p>17 Q. Okay. This is a letter dated</p> <p>18 October 16th from NexPoint to Mr. Seery.</p> <p>19 Do you see that?</p> <p>20 A. Yep.</p> <p>21 Q. Okay. Are you familiar with this</p> <p>22 document? Have you ever seen it before?</p> <p>23 A. Generally. I'm generally familiar</p> <p>24 with it, but I haven't seen it before.</p> <p>25 Q. Okay. Do you recall when you first</p>
<p>Page 32</p> <p>1 J. DONDERO</p> <p>2 learned that this document was sent? Was it at</p> <p>3 or around the time the document was sent?</p> <p>4 A. It was at or around the time, yes.</p> <p>5 Q. Did you discuss with NexPoint any of</p> <p>6 the substance that is in this letter? And again,</p> <p>7 I'm happy to scroll through it if that would be</p> <p>8 helpful.</p> <p>9 MR. BONDS: Objection, form.</p> <p>10 A. Just generally.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you – I don't want to know about</p> <p>13 any conversations, but did you speak with anybody</p> <p>14 at K&amp;L Gates about this particular letter, just</p> <p>15 yes or no?</p> <p>16 A. My primary conversation was with</p> <p>17 internal counsel. K&amp;L Gates might have been on</p> <p>18 some phone call or two.</p> <p>19 Q. Okay. Whose idea was it to send this</p> <p>20 out?</p> <p>21 MR. BONDS: Objection, form.</p> <p>22 A. Whose idea? I – I don't think</p> <p>23 anybody viewed it as an idea as much as a</p> <p>24 regulatory necessity.</p> <p>25 ///</p>	<p>Page 33</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. And did you authorize the sending of</p> <p>4 this particular letter?</p> <p>5 A. Not specifically.</p> <p>6 Q. Did you generally support the sending</p> <p>7 of the letter?</p> <p>8 A. Yes.</p> <p>9 Q. And you knew the letter was being</p> <p>10 sent; is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. And you didn't object to the sending</p> <p>13 of this letter, right?</p> <p>14 A. I did not object.</p> <p>15 Q. Okay. And since learning that the</p> <p>16 letter was sent, have you ever directed NexPoint</p> <p>17 to withdraw the letter?</p> <p>18 A. No.</p> <p>19 Q. You have the power to do that, don't</p> <p>20 you, sir?</p> <p>21 A. I – I don't believe so. When the</p> <p>22 chief compliance officer believes it's a breach</p> <p>23 of regulatory compliance, the chief compliance</p> <p>24 officer in financial institutions has personal</p> <p>25 liability, and I don't believe that other C-suite</p>

<p>Page 34</p> <p>1 J. DONDERO</p> <p>2 executives can overrule the chief compliance</p> <p>3 officer.</p> <p>4 Q. Who is the chief compliance officer?</p> <p>5 A. Jason Post.</p> <p>6 Q. Did Mr. Post ever say that he would</p> <p>7 not withdraw the letter because of regulatory</p> <p>8 compliance?</p> <p>9 MR. BONDS: Objection, form.</p> <p>10 A. I – not that I know of.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you ever discuss with Mr. Post</p> <p>13 whether or not this letter should be withdrawn?</p> <p>14 A. Again, I didn't believe I had the</p> <p>15 authority to.</p> <p>16 Q. Okay. And he never told you that he</p> <p>17 couldn't; that's just the implicit conclusion</p> <p>18 that you drew because he was the chief compliance</p> <p>19 officer; is that fair?</p> <p>20 A. Implicit conclusion? It's more the</p> <p>21 understanding I have of compliance from having</p> <p>22 lived it the last 20 years.</p> <p>23 MR. MORRIS: Okay. Let's put up</p> <p>24 Exhibit 2, please.</p> <p>25 (Dondero Deposition Exhibit 2</p>	<p>Page 35</p> <p>1 J. DONDERO</p> <p>2 marked.)</p> <p>3 MS. CANTY: Do you see it, John?</p> <p>4 MR. MORRIS: I think we still have</p> <p>5 Exhibit 1.</p> <p>6 MS. CANTY: Okay. Give me a second.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. This is another letter that</p> <p>9 was sent by NexPoint to Mr. Seery, this one dated</p> <p>10 November 24, 2020.</p> <p>11 Do you see that, sir?</p> <p>12 A. Yes.</p> <p>13 Q. And you saw this letter at or around</p> <p>14 the time it was sent, right?</p> <p>15 A. I didn't see the letter specifically,</p> <p>16 but I'm aware of it.</p> <p>17 Q. And you knew it was going to be sent;</p> <p>18 is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. And did you authorize this letter to</p> <p>21 be sent on behalf of the advisors and the funds</p> <p>22 that are listed there?</p> <p>23 MR. BONDS: Objection, form.</p> <p>24 A. Let me give the consistent testimony</p> <p>25 I gave last time. It wasn't an authorization. I</p>
<p>Page 36</p> <p>1 J. DONDERO</p> <p>2 was aware of it. It was, I believe, a continued</p> <p>3 regulatory breach from the standpoint of the –</p> <p>4 of compliance that drove the letter.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. When there's a regulatory breach, is</p> <p>7 there an obligation to alert anybody other than</p> <p>8 the portfolio manager?</p> <p>9 A. I know that's being investigated. I</p> <p>10 don't know the answer regarding a breach like</p> <p>11 this.</p> <p>12 Q. Are you aware of any notification</p> <p>13 that NexPoint made to anybody in the world, other</p> <p>14 than Mr. Seery, with respect to the matters set</p> <p>15 forth in Exhibit 1 and Exhibit 2?</p> <p>16 MR. BONDS: Objection, form.</p> <p>17 A. I don't know, and I'm not in a</p> <p>18 position to comment at this point.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. I'm just asking you if you know</p> <p>21 whether – I'm asking for your knowledge.</p> <p>22 Do you know whether NexPoint ever</p> <p>23 advised anybody, other than Mr. Seery, of the</p> <p>24 allegations that are set forth in Exhibit 1 and</p> <p>25 Exhibit 2?</p>	<p>Page 37</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. I don't know, nor would I necessarily</p> <p>4 be informed if compliance self-reports this to</p> <p>5 the SEC or other regulatory bodies. But I do not</p> <p>6 know.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. And nobody told you that, right?</p> <p>9 A. I don't know.</p> <p>10 Q. Is there – did you see any written</p> <p>11 analysis or memorandum that was prepared by</p> <p>12 your – by the chief compliance officer with</p> <p>13 respect to the matters set forth in Exhibit 1 and</p> <p>14 Exhibit 2?</p> <p>15 A. I know there was a multipage analysis</p> <p>16 that was done, but I've never seen it.</p> <p>17 Q. And was it written by the chief</p> <p>18 compliance officer or was it written by legal</p> <p>19 staff?</p> <p>20 A. I was told he did it in conjunction</p> <p>21 with external counsel.</p> <p>22 Q. But you've never seen it?</p> <p>23 A. I've never seen it.</p> <p>24 Q. Did you support the sending of this</p> <p>25 letter?</p>

<p>Page 38</p> <p>1 J. DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Since learning that this letter was</p> <p>4 sent, have you directed NexPoint to withdraw this</p> <p>5 letter?</p> <p>6 A. No, I have not.</p> <p>7 Q. Okay. Around Thanksgiving you</p> <p>8 learned that Mr. Seery was seeking to sell</p> <p>9 certain securities that were owned by certain</p> <p>10 CLOs managed by the debtor, right?</p> <p>11 A. I believe I was informed after the</p> <p>12 fact.</p> <p>13 Q. You were informed that certain sales</p> <p>14 of securities owned by the CLOs were being sold</p> <p>15 at Mr. Seery's direction, right?</p> <p>16 A. Yes.</p> <p>17 MR. BONDS: Objection, form.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. And at around that time, once</p> <p>20 you learned that, you personally intervened to</p> <p>21 stop those trades, right?</p> <p>22 MR. BONDS: Objection, form.</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Can we put up Exhibit 3,</p> <p>25 please.</p>	<p>Page 39</p> <p>1 J. DONDERO</p> <p>2 (Dondero Deposition Exhibit 3</p> <p>3 marked.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. This is an e-mail string. We're</p> <p>6 going to start at the bottom and work up, just so</p> <p>7 we can get it in order. And you'll see the</p> <p>8 bottom begins with an e-mail from Hunter Covitz.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Mr. Covitz?</p> <p>12 A. Covitz, Hunter Covitz manages our CLO</p> <p>13 asset – or our CLO assets, primarily.</p> <p>14 Q. Is he a High- – is he a debtor</p> <p>15 employee or is he employed by any other entity?</p> <p>16 A. I believe he's a debtor employee.</p> <p>17 Q. Okay. Do you see there's a reference</p> <p>18 there to gatekeeper@hcmpl.com?</p> <p>19 A. Yes.</p> <p>20 Q. Are you – withdrawn.</p> <p>21 Is that – withdrawn.</p> <p>22 Is it your understanding that that's</p> <p>23 kind of a basket of different e-mail addresses</p> <p>24 that are held together by the Gatekeeper address?</p> <p>25 A. I wouldn't describe it that way, but</p>
<p>Page 40</p> <p>1 J. DONDERO</p> <p>2 it is a bucket of e-mails.</p> <p>3 Q. Okay. And is your e-mail address or</p> <p>4 was your e-mail address included within</p> <p>5 Gatekeeper?</p> <p>6 A. Historically, it was.</p> <p>7 Q. And do you know when that stopped</p> <p>8 being the case?</p> <p>9 A. I do not know.</p> <p>10 Q. Was it after the time that you</p> <p>11 resigned from your position at the debtor?</p> <p>12 A. I do not know.</p> <p>13 Q. Okay. Matt Pearson is below</p> <p>14 Gatekeeper. Do you know who Mr. Pearson is?</p> <p>15 A. He is a – generally an equity trader</p> <p>16 that works for Joe Sowin.</p> <p>17 Q. And are Mr. Pearson and Mr. Sowin</p> <p>18 employees of the debtor?</p> <p>19 A. I don't believe so. I don't believe</p> <p>20 Joe is. I don't know if Matt is. I don't know.</p> <p>21 Q. Okay. But is it fair to say that</p> <p>22 pursuant to this e-mail, Mr. Covitz is giving</p> <p>23 direction to sell certain securities held by the</p> <p>24 CLOs?</p> <p>25 A. Yes.</p>	<p>Page 41</p> <p>1 J. DONDERO</p> <p>2 Q. Can we scroll to the e-mail above</p> <p>3 that, please. And then Mr. Pearson acknowledged</p> <p>4 that e-mail a little bit later in the day, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And if we can –</p> <p>7 (Interruption by the videographer.)</p> <p>8 MR. MORRIS: It's okay. Let's</p> <p>9 proceed and we'll do the best we can.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Mr. Covitz's e-mail was the – do you</p> <p>12 see the subject matter is Sky Equity?</p> <p>13 A. Yes.</p> <p>14 Q. And do you have an understanding of</p> <p>15 what Sky Equity refers to?</p> <p>16 A. It's a – it's a post-restructured</p> <p>17 equity that the funds have held for years.</p> <p>18 Q. Okay. So if we could scroll up to</p> <p>19 your e-mail that's right there, did you receive a</p> <p>20 copy of Mr. Covitz's original e-mail?</p> <p>21 A. It appears so.</p> <p>22 Q. Okay. And did you give the</p> <p>23 instruction to the recipients of Mr. Hunter</p> <p>24 Covitz's e-mail not to sell the Sky Equity as had</p> <p>25 been instructed by Mr. Seery?</p>

<p>Page 42</p> <p>1 J. DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. And you understood at the time that</p> <p>4 you gave the instruction to the people on this</p> <p>5 e-mail that they were trying to execute trades</p> <p>6 that Mr. Seery had authorized, right?</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 THE WITNESS: Can you repeat the</p> <p>9 question, please.</p> <p>10 MR. MORRIS: Sure.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. At the time that you gave the</p> <p>13 instruction, no, do not, you knew that you were</p> <p>14 stopping trades that had been authorized and</p> <p>15 directed by Mr. Seery, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Did you speak with Mr. Seery before</p> <p>18 instructing the recipients of your e-mail not to</p> <p>19 execute the SKY transactions?</p> <p>20 A. No, I did not.</p> <p>21 Q. Did you take any steps to seek the</p> <p>22 debtor's consent before instructing the</p> <p>23 recipients of this e-mail not to execute the SKY</p> <p>24 transactions?</p> <p>25 A. I'm sorry, please repeat that again.</p>	<p>Page 43</p> <p>1 J. DONDERO</p> <p>2 The – I missed the first part of the sentence.</p> <p>3 Q. No problem.</p> <p>4 Did you take any steps to seek the</p> <p>5 debtor's consent before instructing the</p> <p>6 recipients of your e-mail –</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. – to stop the SKY transactions, to</p> <p>10 stop executing the SKY transactions?</p> <p>11 A. No.</p> <p>12 Q. Thank you.</p> <p>13 Can we scroll up to the response.</p> <p>14 Okay. Stop there.</p> <p>15 Mr. Pearson responded later that</p> <p>16 afternoon. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And in response, he canceled all of</p> <p>19 the SKY and AVYA sales that the debtor had</p> <p>20 directed but which had not yet been executed,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And if we can scroll up to the e-mail</p> <p>24 above that, you responded to that as well, didn't</p> <p>25 you?</p>
<p>Page 44</p> <p>1 J. DONDERO</p> <p>2 A. Yep.</p> <p>3 Q. Can you please read your response out</p> <p>4 loud.</p> <p>5 A. HFAM and DAF – or HFAM and DAF has</p> <p>6 instructed Highland in writing not to sell any</p> <p>7 CLO underlying assets. There is potential</p> <p>8 liability. Don't do it again, please.</p> <p>9 Q. All right. The written instructions,</p> <p>10 is that a reference to the first two exhibits</p> <p>11 that we looked at? And if you want to go back</p> <p>12 and check them out, we can, but I'm trying to –</p> <p>13 I want to know what writings you're referring to.</p> <p>14 Withdrawn.</p> <p>15 Are the writings that you're</p> <p>16 referring to the two exhibits that we just looked</p> <p>17 at, Exhibit 1 and Exhibit 2?</p> <p>18 MR. BONDS: Objection, form.</p> <p>19 A. Generally, yes.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Are you –</p> <p>22 A. I don't know if – I don't know if</p> <p>23 there were more than those two, but generally,</p> <p>24 letters of those substances – well, generally,</p> <p>25 letters of those substance – of that substance</p>	<p>Page 45</p> <p>1 J. DONDERO</p> <p>2 is what I'm referring to.</p> <p>3 Q. I appreciate that, Mr. Dondero.</p> <p>4 Do you recall any other writings that</p> <p>5 you were referring to at the time you sent this</p> <p>6 e-mail?</p> <p>7 A. I'm just saying I don't know if there</p> <p>8 were others or if there were other e-mails. I</p> <p>9 don't know. But there were – they would have</p> <p>10 been similar in terms of substance as those two.</p> <p>11 Q. Okay. Do you see the reference there</p> <p>12 in the latter portion of your e-mail, quote,</p> <p>13 there is potential liability, don't do it again?</p> <p>14 A. Yes.</p> <p>15 Q. Who was the intended recipient of</p> <p>16 that message?</p> <p>17 A. At this juncture, it's to Matt</p> <p>18 Pearson, I believe.</p> <p>19 Q. And why would Matt Pearson have</p> <p>20 personal liability – withdrawn.</p> <p>21 Why did you decide to tell</p> <p>22 Mr. Pearson that he had potential liability for</p> <p>23 executing the transactions that Mr. Seery had</p> <p>24 directed?</p> <p>25 MR. BONDS: Objection, form.</p>



<p style="text-align: right;">Page 46</p> <p>1 J. DONDERO</p> <p>2 A. Yeah, to be clear, it doesn't say</p> <p>3 personal liability. I said potential liability.</p> <p>4 I believe this is – I believe what was done here</p> <p>5 is bona fide typical class action activity that</p> <p>6 we've suffered from historically, when the</p> <p>7 interests of beneficial holders are ignored when</p> <p>8 assets are sold for no business purpose. No</p> <p>9 business purpose. No definable, discernible,</p> <p>10 articulated business purpose.</p> <p>11 There's – I think there's potential</p> <p>12 liability for the manager, the fund complex, you</p> <p>13 know, and sometimes for the individuals involved.</p> <p>14 But my potential liability was a general</p> <p>15 statement.</p> <p>16 THE WITNESS: You know what, guys,</p> <p>17 listen. I've got a couple of calls I've got to</p> <p>18 make that I'm ten minutes late for, so we're</p> <p>19 going to need to take a break for a few minutes</p> <p>20 here, ideally now, or after the next question,</p> <p>21 please.</p> <p>22 MR. MORRIS: I'm happy to take a</p> <p>23 break now. How long are you thinking, though?</p> <p>24 THE WITNESS: Ten or 15 minutes.</p> <p>25 MR. MORRIS: Yeah, that's perfectly</p>	<p style="text-align: right;">Page 47</p> <p>1 J. DONDERO</p> <p>2 fine, Mr. Dondero. Can you just state on the</p> <p>3 record that you will not talk to any Highland</p> <p>4 employee, including Mr. Ellington or</p> <p>5 Mr. Leventon, you will not communicate with them</p> <p>6 or their counsel in any way with respect to this</p> <p>7 deposition?</p> <p>8 THE WITNESS: Yeah, I promise. I</p> <p>9 haven't – yeah. I will not talk to them. The</p> <p>10 only Highland employee I might talk to is Jerome,</p> <p>11 who's handling the systems for this call, and</p> <p>12 that's it.</p> <p>13 MR. MORRIS: I'm fine with that, but</p> <p>14 really, I'm requesting not only Highland</p> <p>15 employees but not to talk to anybody about the</p> <p>16 testimony today. I'm going to accommodate you</p> <p>17 and –</p> <p>18 THE WITNESS: I won't. Nobody cares</p> <p>19 about this deposition. I won't talk to anybody.</p> <p>20 MR. MORRIS: Okay.</p> <p>21 THE WITNESS: I'll be back in ten or</p> <p>22 15 minutes, okay?</p> <p>23 MR. MORRIS: Okay.</p> <p>24 THE VIDEOGRAPHER: 10:41 a.m. Central</p> <p>25 Standard Time, we're off the record.</p>
<p style="text-align: right;">Page 48</p> <p>1 J. DONDERO</p> <p>2 (Recess taken, 10:41 a.m. to</p> <p>3 11:16 a.m. CST)</p> <p>4 THE VIDEOGRAPHER: 11:16 a.m., we're</p> <p>5 back on the record.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Mr. Dondero, can you hear me?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Are you aware that the</p> <p>10 deposition taking place today is pursuant to</p> <p>11 Court order?</p> <p>12 A. Yes.</p> <p>13 Q. Did you schedule meetings and</p> <p>14 telephone calls during the day today,</p> <p>15 notwithstanding the Court's order?</p> <p>16 A. I didn't formally schedule anything.</p> <p>17 Q. Okay. So you have nothing scheduled</p> <p>18 for the rest of the day; is that right? You're</p> <p>19 here to answer questions?</p> <p>20 A. Correct.</p> <p>21 MR. MORRIS: Okay. Can we get the</p> <p>22 last exhibit back up on the screen, please.</p> <p>23 Okay. Can we scroll –</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. We were last looking at your e-mail.</p>	<p style="text-align: right;">Page 49</p> <p>1 J. DONDERO</p> <p>2 Can we see the response above that, please?</p> <p>3 Okay. And that's Mr. Sowin responding.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And Mr. Sowin was following your</p> <p>7 instructions; is that right?</p> <p>8 A. His response is what it is. I'm</p> <p>9 not – what do you mean by following my</p> <p>10 instructions?</p> <p>11 Q. Well, he issued an order – it says,</p> <p>12 quote: Please block all orders from hitting the</p> <p>13 trading desk for the – I assume he meant</p> <p>14 funds – Jim mentioned.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 MR. BONDS: Objection, form.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. And that's exactly what you wanted to</p> <p>20 happen, right?</p> <p>21 A. I'm sorry, could you unhighlight</p> <p>22 that? It's hard for me to read with the</p> <p>23 highlight. Okay. Thank you.</p> <p>24 Yeah, they – I think he tried to</p> <p>25 figure out a way to prevent it from inadvertently</p>

<p>Page 50</p> <p>1 J. DONDERO</p> <p>2 happening.</p> <p>3 Q. Okay. And Mr. Sowin's – the</p> <p>4 substance of Mr. Sowin's e-mail is consistent</p> <p>5 with your intent to prevent any further trades</p> <p>6 from the CLOs, right?</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 A. My intent was to prevent trades that</p> <p>9 weren't in the best interests of investors, that</p> <p>10 investors – the beneficial holders had</p> <p>11 articulated they didn't want sold while these</p> <p>12 funds were in transition, and that the – there</p> <p>13 was no business purpose or benefit to the debtor</p> <p>14 to sell these assets.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. That –</p> <p>17 A. So that's – that was the rationale I</p> <p>18 was trying to capture.</p> <p>19 THE WITNESS: Hold on for me one</p> <p>20 second. Jerome just stepped in. What does the</p> <p>21 systems guy want Jerome to do?</p> <p>22 MR. MORRIS: Figure out a way to turn</p> <p>23 the lights on.</p> <p>24 (Technical comments off the</p> <p>25 stenographic record.)</p>	<p>Page 51</p> <p>1 J. DONDERO</p> <p>2 MR. MORRIS: Let's go forward.</p> <p>3 THE WITNESS: So we're okay with</p> <p>4 Jerome? That's it for now?</p> <p>5 MR. MORRIS: Yeah.</p> <p>6 THE WITNESS: All right. Thank you.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. You didn't correct anything that</p> <p>9 Mr. Sowin did – said in this e-mail, did you?</p> <p>10 A. No.</p> <p>11 Q. You didn't tell –</p> <p>12 MR. BONDS: Can you repeat the</p> <p>13 question? I didn't understand it.</p> <p>14 MR. MORRIS: That's okay.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Mr. Dondero, you didn't correct</p> <p>17 anything that Mr. Sowin wrote in this e-mail, did</p> <p>18 you?</p> <p>19 A. No.</p> <p>20 Q. You didn't tell Mr. Sowin that he</p> <p>21 misunderstood your intent, did you?</p> <p>22 A. I don't believe so.</p> <p>23 Q. And you didn't give any explanation</p> <p>24 to him as to why you did not want to sell any CLO</p> <p>25 underlying assets except for what you wrote in</p>
<p>Page 52</p> <p>1 J. DONDERO</p> <p>2 that e-mail below, right?</p> <p>3 MR. BONDS: Objection, form.</p> <p>4 A. I – I believe I – well, the e-mails</p> <p>5 stand on their own. I think the reasons below</p> <p>6 are sufficient. I think I had a conversation</p> <p>7 with Joe besides that, and there was an</p> <p>8 unawareness on the trading desk and with Hunter</p> <p>9 that the interest of investors had been expressed</p> <p>10 and ignored by Seery, you know, so – they</p> <p>11 weren't aware of that. They thought that was</p> <p>12 unusual and inappropriate.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. In your role as portfolio manager, is</p> <p>15 it – do you believe it's your responsibility to</p> <p>16 always defer to the desires of your investors?</p> <p>17 Do you cede – do you cede – withdrawn.</p> <p>18 Do you cede responsibility and your</p> <p>19 business judgment for making transactions to your</p> <p>20 investors?</p> <p>21 MR. BONDS: Objection, form.</p> <p>22 A. In this case, it would be</p> <p>23 appropriate. In general, it would depend.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Okay. A few days later, you learned</p>	<p>Page 53</p> <p>1 J. DONDERO</p> <p>2 that Mr. Seery was trying a work-around to</p> <p>3 effectuate the trades anyway, right?</p> <p>4 A. Yes.</p> <p>5 Q. And you wrote to Thomas Surgent to</p> <p>6 let him know that you were aware that Seery was</p> <p>7 trying a work-around to effectuate the trades,</p> <p>8 right?</p> <p>9 A. I believe there was such an e-mail.</p> <p>10 Q. Okay. Can you just scroll up and see</p> <p>11 that e-mail, please. All right. Stop right</p> <p>12 there.</p> <p>13 Who is Mr. Surgent?</p> <p>14 A. He's the chief compliance officer of</p> <p>15 Highland Capital.</p> <p>16 Q. The debtor?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And how long has he held that</p> <p>19 position to the best of your recollection?</p> <p>20 A. A long time. More than five years.</p> <p>21 Q. What does it mean to – when you</p> <p>22 wrote that Mr. Seery was, quote, working on a</p> <p>23 work-around to trade these securities? What does</p> <p>24 that mean?</p> <p>25 A. As a noninvestment professional and</p>

<p>Page 54</p> <p>1 J. DONDERO</p> <p>2 as a nontrader and as a nonportfolio manager, he</p> <p>3 set up an account for himself, I believe,</p> <p>4 directly with Jefferies to trade the securities</p> <p>5 in the CLOs.</p> <p>6 Q. How did you learn that?</p> <p>7 A. I think we still get trade reports</p> <p>8 from Jefferies, or Jefferies – the Jefferies</p> <p>9 trades get reported back into the system and have</p> <p>10 to be input by Joe, and so Joe sees the trades</p> <p>11 come back from Jefferies at the end of the day.</p> <p>12 Q. And Joe is Joe Sowin?</p> <p>13 A. Yes.</p> <p>14 Q. And he works for you; is that right?</p> <p>15 MR. BONDS: Objection, form.</p> <p>16 MR. MORRIS: Withdrawn.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. He works for one of the advisors; is</p> <p>19 that right?</p> <p>20 A. I believe he works for HFAM, but I'm</p> <p>21 not a hundred percent certain.</p> <p>22 Q. And the work-around was – is that</p> <p>23 another way of saying that Mr. Seery tried to do</p> <p>24 the trades that he thought were appropriate</p> <p>25 without your interference?</p>	<p>Page 55</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. I'm not going to agree with that</p> <p>4 speculation. If you want me to speculate, I</p> <p>5 think Seery had no business purpose and he was</p> <p>6 doing it to tweak myself and everybody else.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Did he tell you that?</p> <p>9 A. No. I'm speculating.</p> <p>10 Q. Okay. Do you have any idea why he</p> <p>11 made the trades?</p> <p>12 A. He – he had no –</p> <p>13 Q. Withdrawn. I'm sorry.</p> <p>14 Do you have any idea why he wanted to</p> <p>15 make the trades?</p> <p>16 A. I didn't speak to him directly.</p> <p>17 Q. Okay.</p> <p>18 A. Indirectly – I didn't speak to him.</p> <p>19 I didn't speak to him directly. It was –</p> <p>20 Q. Do you have any personal knowledge as</p> <p>21 you sit here right now as to why Mr. Seery wanted</p> <p>22 to effectuate the trades that you were blocking?</p> <p>23 MR. BONDS: Objection, form.</p> <p>24 A. I've thought about it at length. I</p> <p>25 can't come up with a business purpose that would</p>
<p>Page 56</p> <p>1 J. DONDERO</p> <p>2 supersede an account that's in transition and the</p> <p>3 beneficial owners have made it clear that the</p> <p>4 manager's not in compliance, they're moving the</p> <p>5 accounts, and knowing the individual assets that</p> <p>6 were sold, I can't – I couldn't think of a</p> <p>7 business purpose that Seery would be operating</p> <p>8 under.</p> <p>9 MR. MORRIS: Okay. I move to strike.</p> <p>10 I'm not asking you for what you think. I'm</p> <p>11 asking you for facts.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Do you have any knowledge of any</p> <p>14 facts as to the business justification or</p> <p>15 rationale for why Mr. Seery wanted to make these</p> <p>16 trades?</p> <p>17 MR. BONDS: Objection, form.</p> <p>18 A. No, I don't believe there are any.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. And you never asked him; is that</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. And you never instructed anybody on</p> <p>24 your behalf or on behalf of the advisors or on</p> <p>25 behalf of the funds to ask Mr. Seery why he</p>	<p>Page 57</p> <p>1 J. DONDERO</p> <p>2 wanted to make these trades, right?</p> <p>3 A. That's not correct.</p> <p>4 Q. Nobody ever told you that they'd had</p> <p>5 a conversation with Mr. Seery in which</p> <p>6 Mr. Seery – (audio malfunction) –</p> <p>7 (Clarification requested by the</p> <p>8 stenographer.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Did anybody ever tell you that they</p> <p>11 had spoken with Mr. Seery and Mr. Seery had</p> <p>12 provided an explanation, a business rationale for</p> <p>13 the transactions that he wanted to effectuate?</p> <p>14 MR. BONDS: Objection, form.</p> <p>15 A. Yes. Yes.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Who was that?</p> <p>18 A. Joe Sowin.</p> <p>19 Q. When did he tell you about this</p> <p>20 conversation?</p> <p>21 A. It was at or about this time in...</p> <p>22 Q. And what did Mr. Sowin tell you?</p> <p>23 A. Seery told him it was for risk</p> <p>24 minimization or risk reduction.</p> <p>25 Q. Did he tell him anything else?</p>



<p>Page 58</p> <p>1 J. DONDERO</p> <p>2 A. No. He said risk reduction was why</p> <p>3 he was selling the securities.</p> <p>4 Q. That's the only rationale that</p> <p>5 Mr. Seery gave to Mr. Sowin; is that your</p> <p>6 testimony?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Did Mr. Sowin tell you that he</p> <p>9 asked any questions of Mr. Seery?</p> <p>10 A. He asked him why he was selling them.</p> <p>11 Q. And you've given me the entirety of</p> <p>12 the answer as conveyed by Mr. Sowin to you; is</p> <p>13 that right?</p> <p>14 A. Yes.</p> <p>15 Q. Is Mr. Sowin's conversation with</p> <p>16 Mr. Seery about the justification for these</p> <p>17 trades reflected in any document or any e-mail</p> <p>18 anywhere that you can recall?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Did K&amp;L Gates explain their</p> <p>21 understanding of the business rationale of these</p> <p>22 trades in any of the letters that they sent on</p> <p>23 behalf of the funds or any of the advisors?</p> <p>24 A. Not that I'm aware of. I'm not</p> <p>25 aware.</p>	<p>Page 59</p> <p>1 J. DONDERO</p> <p>2 Q. Do you know Dustin Norris?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know that he testified in</p> <p>5 December in connection with this bankruptcy</p> <p>6 matter?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ever tell Dustin Norris about</p> <p>9 the conversation Mr. Sowin had with Mr. Seery</p> <p>10 that you've described here?</p> <p>11 A. I believe he was aware of it.</p> <p>12 Q. Do you know – did you talk to him in</p> <p>13 advance of his testimony?</p> <p>14 A. I talk to Dustin most every day.</p> <p>15 Q. And did you tell Dustin that he</p> <p>16 should make sure to alert the Court about this</p> <p>17 conversation with Mr. Sowin and Mr. Seery?</p> <p>18 A. No.</p> <p>19 Q. Did you think it was important that</p> <p>20 the Court know Mr. Seery's business rationale?</p> <p>21 A. I thought it was a nonsensical answer</p> <p>22 on Seery's part. I didn't have an opinion on</p> <p>23 whether or not the Court should know.</p> <p>24 Q. Now, you – at the time, you were</p> <p>25 speaking to Mr. Seery directly; isn't that right?</p>
<p>Page 60</p> <p>1 J. DONDERO</p> <p>2 A. Rarely. I didn't – since the</p> <p>3 injunction or since – rarely. I can't remember</p> <p>4 the last time I've spoken to him. Scott</p> <p>5 Ellington has been the appropriate go-between as</p> <p>6 far as I understand it.</p> <p>7 Q. Okay. Was there anything that</p> <p>8 prevented you in November 2020 from picking up</p> <p>9 the phone to talk to Mr. Seery about his desire</p> <p>10 to effectuate these transactions?</p> <p>11 A. No. The last time I – yeah, I'm</p> <p>12 remembering, the last time I talked to Seery was</p> <p>13 the day after Thanksgiving.</p> <p>14 Q. Okay. Is there anything that you're</p> <p>15 aware of that prevented you from picking up the</p> <p>16 phone and asking Mr. Seery for his business</p> <p>17 justification for these trades prior to</p> <p>18 December 10, 2020?</p> <p>19 MR. BONDS: Objection, form.</p> <p>20 A. No. I expressed my disapproval via</p> <p>21 e-mail.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Okay. Why did you decide to write to</p> <p>24 Mr. Surgent on November 27th?</p> <p>25 A. I wasn't sure he was aware of Seery's</p>	<p>Page 61</p> <p>1 J. DONDERO</p> <p>2 work-around, and I know Thomas has an acute</p> <p>3 awareness of his personal liability for</p> <p>4 regulatory breaches or doing things that aren't</p> <p>5 in the best interests of investors, and I don't</p> <p>6 believe he has the extra insurance and</p> <p>7 indemnities that Seery has.</p> <p>8 Q. If he was acutely aware of it, why</p> <p>9 did you feel the need to remind him of that in</p> <p>10 your e-mail to him?</p> <p>11 A. Because I don't think he was aware</p> <p>12 that Seery was doing a work-around on behalf of</p> <p>13 the debtor that he was compliance officer of. I</p> <p>14 wasn't convinced he was aware, so I included him</p> <p>15 on the e-mail.</p> <p>16 Q. Did you intend to suggest that by</p> <p>17 following Mr. Seery's orders to execute the</p> <p>18 trades, that Mr. Surgent faced personal</p> <p>19 liability?</p> <p>20 A. That's the way it works.</p> <p>21 Q. Okay. And you wanted him to know</p> <p>22 that, right?</p> <p>23 A. I wanted him to know that Seery was</p> <p>24 doing inappropriate trades and doing</p> <p>25 inappropriate work-around, in my opinion. I</p>

<p style="text-align: right;">Page 62</p> <p>1 J. DONDERO</p> <p>2 didn't think Thomas was aware. I thought Seery</p> <p>3 was operating independently.</p> <p>4 Thomas might have been aware, but I</p> <p>5 didn't think so. I don't talk to – I haven't</p> <p>6 talked to Thomas in I don't know when, so I</p> <p>7 thought it was important for him to know.</p> <p>8 Q. Okay. You have communicated with</p> <p>9 Mr. Seery from time to time via text message,</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 MR. MORRIS: Can we put up Exhibit 4,</p> <p>13 please.</p> <p>14 (Dondero Deposition Exhibit 4</p> <p>15 marked.)</p> <p>16 MR. MORRIS: And if we can scroll</p> <p>17 down a little bit. Okay.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. This is a text that you sent at the</p> <p>20 bottom there at 5:26 p.m. to Mr. Seery; is that</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. Can you just read that text, that</p> <p>24 5:26 out loud?</p> <p>25 A. Be careful what you do, last warning.</p>	<p style="text-align: right;">Page 63</p> <p>1 J. DONDERO</p> <p>2 Q. Why did you write that?</p> <p>3 A. Because all the reasons we just went</p> <p>4 over. And I think he's violating the Advisers</p> <p>5 Act. He's putting the funds and the debtor at</p> <p>6 risk, in jeopardy of class action lawsuits, and</p> <p>7 he's going against the interests of investors</p> <p>8 that are in transition, and expressed a desire to</p> <p>9 not have their assets sold, especially when</p> <p>10 there's no business reason.</p> <p>11 And for all the reasons articulated</p> <p>12 below – I mean, for all the reasons we just went</p> <p>13 over, and there are a few others I probably</p> <p>14 haven't remembered off the top of my head, but</p> <p>15 it's – I think it's – I think his activities</p> <p>16 regarding the CLOs is incredibly inappropriate,</p> <p>17 unfounded and malicious, and he hadn't sold that</p> <p>18 many securities at that point in time, somewhat</p> <p>19 de minimis amounts, but it was a warning to tell</p> <p>20 him to stop; otherwise, rightfully, the</p> <p>21 beneficial owners would take more significant</p> <p>22 actions, which I think they should and they will.</p> <p>23 Q. What significant action are the</p> <p>24 beneficial owners going to take?</p> <p>25 A. I don't know. But there's a lot more</p>
<p style="text-align: right;">Page 64</p> <p>1 J. DONDERO</p> <p>2 things that they can push on, like you were</p> <p>3 suggesting earlier, asking earlier in terms of</p> <p>4 self-reporting to the SEC.</p> <p>5 Q. But you haven't done that yet, to the</p> <p>6 best of your knowledge; is that right?</p> <p>7 A. I'm not aware.</p> <p>8 Q. You wrote there that it's the last</p> <p>9 warning.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. How many other warnings have you</p> <p>13 given Mr. Seery?</p> <p>14 A. All the e-mails we just went over.</p> <p>15 Q. Anything else?</p> <p>16 A. No.</p> <p>17 Q. Okay. You got document requests in</p> <p>18 this – in connection with this matter; isn't</p> <p>19 that right?</p> <p>20 A. Yes.</p> <p>21 MR. MORRIS: Okay. Can we put up</p> <p>22 Exhibit 5, please.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. You know, before we look at that,</p> <p>25 earlier this morning you mentioned – you made a</p>	<p style="text-align: right;">Page 65</p> <p>1 J. DONDERO</p> <p>2 reference to internal counsel.</p> <p>3 Do you recall that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Who were you referring to?</p> <p>6 A. D.C. Sauter.</p> <p>7 Q. And D.C. Sauter is internal counsel</p> <p>8 for who?</p> <p>9 A. I'm sorry, was there a question</p> <p>10 there?</p> <p>11 Q. Yes. I apologize.</p> <p>12 D.C. Sauter is internal counsel for</p> <p>13 who, for which entity?</p> <p>14 A. NexPoint.</p> <p>15 Q. Okay. Were you referring to anybody</p> <p>16 else?</p> <p>17 A. No.</p> <p>18 Q. Okay. You mentioned Scott Ellington</p> <p>19 earlier, right?</p> <p>20 A. Yes.</p> <p>21 Q. And who is Mr. Ellington?</p> <p>22 A. He's general counsel at Highland</p> <p>23 historically. I think his role has been</p> <p>24 redefined as settlement counsel, that's how it</p> <p>25 was described to me, I guess, six, nine months</p>

<p>Page 66</p> <p>1 J. DONDERO</p> <p>2 ago, six months ago.</p> <p>3 Q. Mr. Ellington is employed by the</p> <p>4 debtor, right?</p> <p>5 A. Yes.</p> <p>6 Q. And do you know when he first became</p> <p>7 employed by the debtor?</p> <p>8 A. Over a decade ago.</p> <p>9 Q. Do you know whether Mr. Ellington has</p> <p>10 any employer other than the debtor?</p> <p>11 A. I don't know.</p> <p>12 Q. He never told you that he had an</p> <p>13 employer other than the debtor, did he?</p> <p>14 A. I don't know.</p> <p>15 Q. You know if he told you or not,</p> <p>16 right? Did he ever tell you that?</p> <p>17 A. He never told me he did, no.</p> <p>18 Q. And you have no facts or reason to</p> <p>19 believe, as you sit here right now, that the</p> <p>20 debtor is – withdrawn.</p> <p>21 You have no facts or reason to</p> <p>22 believe right now that Mr. Ellington has any</p> <p>23 employer other than the debtor, correct?</p> <p>24 MR. BONDS: Objection, form.</p> <p>25 A. I'd like to stick with: I don't</p>	<p>Page 67</p> <p>1 J. DONDERO</p> <p>2 know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. You have no reason to believe that;</p> <p>5 is that fair?</p> <p>6 A. Correct, I don't know.</p> <p>7 Q. Okay. He's not – Mr. Ellington is</p> <p>8 not your personal lawyer, right?</p> <p>9 A. No.</p> <p>10 Q. He's never represented Jim Dondero</p> <p>11 personally; is that right?</p> <p>12 A. No.</p> <p>13 MR. MORRIS: Let's look at the</p> <p>14 document request, please, Exhibit 5.</p> <p>15 (Dondero Deposition Exhibit 5</p> <p>16 marked.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. If we could go – let me just ask you</p> <p>19 generally, Mr. Dondero.</p> <p>20 Have you ever seen this document</p> <p>21 before?</p> <p>22 A. No.</p> <p>23 Q. Are you aware that the debtor served</p> <p>24 document requests on the Bonds Ellis firm for</p> <p>25 documents in connection with its motion for a</p>
<p>Page 68</p> <p>1 J. DONDERO</p> <p>2 preliminary injunction?</p> <p>3 A. Yes.</p> <p>4 Q. How did you learn that?</p> <p>5 A. I heard about it from my lawyers.</p> <p>6 Q. Okay. Did you oversee the search for</p> <p>7 responsive documents?</p> <p>8 A. Response – I know we were responsive</p> <p>9 and compliant, but I delegated it to my</p> <p>10 assistants and the employees at Bonds Ellis.</p> <p>11 Q. Which assistants did you delegate</p> <p>12 this to?</p> <p>13 A. Tara Loiben. I think primarily Tara</p> <p>14 Loiben.</p> <p>15 Q. And who is Ms. Loiben?</p> <p>16 A. She's my assistant.</p> <p>17 Q. And who is she –</p> <p>18 A. I'm sorry?</p> <p>19 Q. Who is she employed by?</p> <p>20 A. I – I don't know for sure. I think</p> <p>21 Highland, but I don't know. I don't want to</p> <p>22 speculate.</p> <p>23 Q. What instructions – (audio</p> <p>24 malfunction) –</p> <p>25 (Clarification requested by the</p>	<p>Page 69</p> <p>1 J. DONDERO</p> <p>2 stenographer.)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. What instructions did you give her in</p> <p>5 order to search for documents?</p> <p>6 A. I didn't – I didn't give her any.</p> <p>7 She worked with that and she had – she has full</p> <p>8 access to my e-mail, and I gave her my phone for</p> <p>9 the better part of a couple days in the office.</p> <p>10 Q. You – until the end of 2020, you had</p> <p>11 an e-mail address with an HCMLP or a Highland</p> <p>12 e-mail address, right?</p> <p>13 A. Yes.</p> <p>14 Q. Have you stopped – has that e-mail</p> <p>15 address ceased to be in use?</p> <p>16 A. I've switched to an e-mail at the</p> <p>17 bank as of – whatever it was, last week or...</p> <p>18 Q. In the year 2020, did you use any</p> <p>19 e-mail address other than the Highland e-mail</p> <p>20 address?</p> <p>21 A. No.</p> <p>22 Q. You don't have a Gmail address or any</p> <p>23 other personal e-mail address?</p> <p>24 A. I have an old Gmail address, but it's</p> <p>25 dormant. I haven't logged on to it in years.</p>

<p style="text-align: right;">Page 70</p> <p>1 J. DONDERO</p> <p>2 Q. Okay. And you understood that the</p> <p>3 debtor's document request called for the</p> <p>4 production of all text messages that were</p> <p>5 responsive to the requests, right?</p> <p>6 A. Yes.</p> <p>7 Q. Can we just scroll down to the</p> <p>8 requests themselves? Right there.</p> <p>9 Do you see Request No. 3 is for all</p> <p>10 communications between you and any person</p> <p>11 employed by the debtor?</p> <p>12 A. Yes.</p> <p>13 Q. And did you understand that the</p> <p>14 request was limited to the time period of, I</p> <p>15 think, December 10th, 2020 to the end of the</p> <p>16 month?</p> <p>17 A. I didn't read the details of this. I</p> <p>18 didn't get into it. I didn't do the document</p> <p>19 production that I believe was completed and</p> <p>20 responsive. I delegated that.</p> <p>21 Q. Did you review the documents before</p> <p>22 they were produced? Do you know what was</p> <p>23 produced? Withdrawn. Two different questions.</p> <p>24 Did you review the documents for</p> <p>25 completeness before your lawyers delivered them</p>	<p style="text-align: right;">Page 71</p> <p>1 J. DONDERO</p> <p>2 to my firm?</p> <p>3 A. Only in the most general – when</p> <p>4 she'd print out a stack of them, I'd just thumb</p> <p>5 through the stack of them, and that was it. But</p> <p>6 other than that, no.</p> <p>7 Q. Did you do anything to satisfy</p> <p>8 yourself that you had produced all responsive</p> <p>9 documents?</p> <p>10 A. I trust Tara's work ethic and</p> <p>11 capabilities, and I trust the lawyers at Bonds</p> <p>12 Ellis, so I didn't – I didn't intervene or</p> <p>13 supersede or supervise.</p> <p>14 Q. So you didn't do anything to make</p> <p>15 sure – you didn't do anything personally –</p> <p>16 withdrawn.</p> <p>17 You didn't take any steps personally</p> <p>18 to make sure that all responsive documents had</p> <p>19 been produced, right?</p> <p>20 MR. BONDS: Objection, form.</p> <p>21 A. I wasn't involved personally, but I</p> <p>22 do believe it was responsive and complete.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Until early December, you had a phone</p> <p>25 that was bought and paid for by the debtor,</p>
<p style="text-align: right;">Page 72</p> <p>1 J. DONDERO</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. What happened to that phone?</p> <p>5 A. It was disposed of as part of getting</p> <p>6 a replacement phone in anticipation of</p> <p>7 potentially a transition.</p> <p>8 Q. Who decided to dispose of it?</p> <p>9 A. That's historically what we've done</p> <p>10 with all of our historic phones, when we've</p> <p>11 gotten new phones. I've gotten a new phone, I</p> <p>12 guess, every four or five years, and the old ones</p> <p>13 have always been destroyed.</p> <p>14 Q. Who decided to destroy this –</p> <p>15 withdrawn.</p> <p>16 When you say it was disposed of, what</p> <p>17 does that mean?</p> <p>18 A. As far as I know, it was disposed of</p> <p>19 in the garbage, but I don't know if it was</p> <p>20 recycled or whatever.</p> <p>21 Q. And who decided to throw it in the</p> <p>22 garbage?</p> <p>23 A. We've always – we've always done</p> <p>24 that when we've gotten new phones, versus trading</p> <p>25 them in, for the senior executives.</p>	<p style="text-align: right;">Page 73</p> <p>1 J. DONDERO</p> <p>2 Q. I appreciate that, but I'm just</p> <p>3 talking about the very specific phone that the</p> <p>4 debtor bought and paid for for your benefit. Who</p> <p>5 made the decision to dispose and throw that phone</p> <p>6 away?</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 A. I – like I said, I understood it to</p> <p>9 be our standard process and protocol. I don't</p> <p>10 know. I can't label anybody with the decision.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Well, who threw it away?</p> <p>13 A. I don't know.</p> <p>14 Q. You don't know if you threw the phone</p> <p>15 away?</p> <p>16 A. No, I – I don't know. No, I don't</p> <p>17 remember throwing it away, but I don't know who</p> <p>18 did.</p> <p>19 Q. Did you have conversations with</p> <p>20 anybody about the decision to throw away the</p> <p>21 phone?</p> <p>22 A. Like I said, it wasn't a decision or</p> <p>23 a new decision. It's been the process, as far as</p> <p>24 I understand it, every time we've upgraded phones</p> <p>25 over the last 30 years.</p>

<p style="text-align: right;">Page 74</p> <p>1 J. DONDERO</p> <p>2 Q. You just throw it in the garbage?</p> <p>3 You don't try to get a credit for it by returning</p> <p>4 it?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you ever speak with</p> <p>7 Mr. Ellington about your phone that was bought</p> <p>8 and paid for by the debtor?</p> <p>9 A. I think Ellington's phone and my</p> <p>10 phone and I think – I think right around the</p> <p>11 same time, in anticipation, in case there was a</p> <p>12 transition or in case there was a liquidation</p> <p>13 plan, it was time to move the phone ownership</p> <p>14 away from the estate. The estate wasn't going to</p> <p>15 pay for it anymore anyway in another couple of</p> <p>16 weeks so, I –</p> <p>17 Q. Were you aware –</p> <p>18 A. I'm sorry, what's your question?</p> <p>19 Q. Are you aware that the UCC had asked</p> <p>20 for your text messages before the time that you</p> <p>21 disposed of your phone?</p> <p>22 A. No.</p> <p>23 Q. Nobody ever told you that the UCC</p> <p>24 wanted your phone?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 75</p> <p>1 J. DONDERO</p> <p>2 Q. When exactly did you dispose of your</p> <p>3 phone?</p> <p>4 A. On or about when I got my new phone.</p> <p>5 Q. Who at the debtor did you tell that</p> <p>6 you disposed of your phone?</p> <p>7 A. I don't – I don't remember who. Was</p> <p>8 it Jason Rothstein was involved in getting my new</p> <p>9 phone and knew that I was disposing of my old</p> <p>10 phone? I don't know who else knew. But again,</p> <p>11 it was standard procedure.</p> <p>12 Q. Did it ever occur to you to get the</p> <p>13 debtor's consent before doing this?</p> <p>14 MR. BONDS: Objection, form.</p> <p>15 A. No.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did you have the phone number</p> <p>18 transferred to your personal account?</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever ask the debtor for its</p> <p>21 permission to do that?</p> <p>22 A. No.</p> <p>23 Q. Did you ever give the debtor notice</p> <p>24 that you were doing that?</p> <p>25 A. I didn't believe it was necessary or</p>
<p style="text-align: right;">Page 76</p> <p>1 J. DONDERO</p> <p>2 appropriate.</p> <p>3 Q. So you wanted it to be a secret?</p> <p>4 MR. BONDS: Objection, form.</p> <p>5 A. No. No, I wouldn't describe it as a</p> <p>6 secret. I would say I didn't think it was</p> <p>7 necessary or appropriate.</p> <p>8 Every executive that's ever left</p> <p>9 Highland has always kept their phone number,</p> <p>10 period. Highland's never said, no, we're keeping</p> <p>11 the phone number, ever, out of the two or 300</p> <p>12 people that have come through Highland. And I</p> <p>13 don't believe most businesses try and retain the</p> <p>14 phone number of employees when they leave. It's</p> <p>15 ludicrous on its surface.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. So let me just make sure that</p> <p>18 I understand this.</p> <p>19 You threw the phone – withdrawn.</p> <p>20 Somebody threw the phone that the</p> <p>21 debtor bought and paid for in the garbage without</p> <p>22 the debtor's knowledge or consent; is that right?</p> <p>23 MR. BONDS: Objection, form.</p> <p>24 A. I'd just repeat my testimony, that</p> <p>25 it's always been our process to destroy old</p>	<p style="text-align: right;">Page 77</p> <p>1 J. DONDERO</p> <p>2 phones when we get new phones.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. You were no longer an employee of the</p> <p>5 debtor at the time, correct?</p> <p>6 A. At the time? I believe I was an</p> <p>7 employee of the debtor since January.</p> <p>8 Q. Well, you stayed on as an unpaid</p> <p>9 employee until mid October; isn't that right?</p> <p>10 A. Right, but I – but I don't even</p> <p>11 think my phone was paid for by the debtor. I</p> <p>12 think my phone was paid for by shared services by</p> <p>13 NexPoint. I – I don't know what you're – I</p> <p>14 don't know what you're getting at or what</p> <p>15 you're – you're asking me.</p> <p>16 Q. It's not complicated.</p> <p>17 Did you tell the debtor that you</p> <p>18 threw away your phone at any time until this</p> <p>19 deposition?</p> <p>20 A. Did I tell the debtor? Like I said,</p> <p>21 I didn't think it was the debtor's phone. No, I</p> <p>22 did not tell the debtor or get permission. No, I</p> <p>23 did not.</p> <p>24 Q. And did you tell the debtor that you</p> <p>25 were changing the phone number?</p>



<p>Page 78</p> <p>1 J. DONDERO</p> <p>2 A. No.</p> <p>3 Q. And did Mr. Ellington help you change</p> <p>4 the phone number?</p> <p>5 MR. BONDS: Objection, form.</p> <p>6 A. I didn't change the phone number.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Withdrawn.</p> <p>9 Did Mr. Ellington help you have the</p> <p>10 phone number transitioned to your personal</p> <p>11 account?</p> <p>12 MR. BONDS: Objection, form.</p> <p>13 A. No. No. It was Jason – Jason</p> <p>14 Rothstein handles the technology stuff and the</p> <p>15 phone stuff.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did Mr. Ellington also change his</p> <p>18 phone number to his own personal account?</p> <p>19 A. My understanding was there was</p> <p>20 numerous senior executives that changed their</p> <p>21 phone in anticipation of being terminated by the</p> <p>22 debtor shortly.</p> <p>23 Q. Who else did it?</p> <p>24 A. I don't know. I thought it was – I</p> <p>25 didn't think it was just Ellington and I. I</p>	<p>Page 79</p> <p>1 J. DONDERO</p> <p>2 thought it was a bunch of senior execs. But –</p> <p>3 Q. What's the basis –</p> <p>4 A. – who cares? Who cares? I didn't</p> <p>5 care. I don't know. I mean –</p> <p>6 Q. I don't care if you care or not. I'm</p> <p>7 asking you questions.</p> <p>8 What is the basis for your statement</p> <p>9 that other people besides you and Mr. Ellington</p> <p>10 changed the phone numbers?</p> <p>11 MR. BONDS: Objection, form.</p> <p>12 A. That was my understanding. That was</p> <p>13 my understanding. But I don't – I don't recall</p> <p>14 specifics. I didn't pay attention.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. What is the basis for the</p> <p>17 understanding? Did somebody tell you that?</p> <p>18 MR. BONDS: Can you repeat the</p> <p>19 question?</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. What is the basis for your</p> <p>22 understanding? Did somebody tell you that</p> <p>23 employees of Highland other than Mr. Ellington</p> <p>24 had changed the phone numbers?</p> <p>25 A. Yes. My understanding was everybody</p>
<p>Page 80</p> <p>1 J. DONDERO</p> <p>2 had to move their phones in the next 30 days or</p> <p>3 next 25 days, based on Seery's termination</p> <p>4 notice.</p> <p>5 Q. Did Jim Seery – withdrawn. I'm</p> <p>6 perfectly fine.</p> <p>7 MR. MORRIS: Can we put up Exhibit 6,</p> <p>8 please.</p> <p>9 (Dondero Deposition Exhibit 6</p> <p>10 marked.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. That's Jason Rothstein.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. He didn't throw the phone in the</p> <p>16 garbage, did he?</p> <p>17 A. I don't know.</p> <p>18 Q. Well, according to the text that he</p> <p>19 sent you on December 10th, he left your own –</p> <p>20 old phone in the drawer of Tara's desk.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. So he didn't think that it was his</p> <p>24 responsibility as of December 10th to throw it in</p> <p>25 the garbage, did he?</p>	<p>Page 81</p> <p>1 J. DONDERO</p> <p>2 A. I don't know.</p> <p>3 Q. He left it in Tara's desk, didn't he?</p> <p>4 A. On December 10th. But I don't know</p> <p>5 what he did on December 11th.</p> <p>6 Q. Did you tell him to do anything?</p> <p>7 A. I don't – all I know is the phone's</p> <p>8 been disposed of. That's all I know.</p> <p>9 Q. Okay. Did you tell Mr. Rothstein to</p> <p>10 take the phone out of Tara's desk and throw it in</p> <p>11 the garbage?</p> <p>12 A. I did not.</p> <p>13 Q. Did you tell Tara to take the phone</p> <p>14 out of her desk and throw it in the garbage?</p> <p>15 A. I did not.</p> <p>16 MR. MORRIS: Okay. Can we put up</p> <p>17 Exhibit 7, please.</p> <p>18 (Dondero Deposition Exhibit 7</p> <p>19 marked.)</p> <p>20 MR. MORRIS: Can we just scroll down</p> <p>21 a little bit.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Is this a text message from you to</p> <p>24 Tara?</p> <p>25 A. Yep.</p>

<p style="text-align: right;">Page 82</p> <p>1 J. DONDERO</p> <p>2 Q. If we could scroll up just a little</p> <p>3 bit so we can see the date.</p> <p>4 Well, it doesn't have a date, but do</p> <p>5 you recall when you asked Tara to come in to</p> <p>6 work – (audio malfunction) –</p> <p>7 (Clarification requested by the</p> <p>8 stenographer.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. – to come in to work on discovery.</p> <p>11 Do you recall when you sent this text message,</p> <p>12 Mr. Dondero?</p> <p>13 A. No.</p> <p>14 Q. Do you know how Tara – withdrawn.</p> <p>15 Did Tara come in to work on discovery</p> <p>16 at any time?</p> <p>17 A. Yes.</p> <p>18 Q. And did you give her any instructions</p> <p>19 on what to do?</p> <p>20 A. Again, just generally.</p> <p>21 Q. What were the general instructions</p> <p>22 that you gave her?</p> <p>23 A. Work with the Bonds Ellis guys.</p> <p>24 Here's the access to my computer and my phone.</p> <p>25 Be complete and be responsive.</p>	<p style="text-align: right;">Page 83</p> <p>1 J. DONDERO</p> <p>2 Q. Did you ever speak with Mr. Ellington</p> <p>3 about your document production?</p> <p>4 A. No.</p> <p>5 Q. Did Mr. Ellington play any role in</p> <p>6 searching for, reviewing or producing responsive</p> <p>7 documents?</p> <p>8 A. Nope.</p> <p>9 Q. Did you ever speak with Mr. Leventon</p> <p>10 about your document production?</p> <p>11 A. Nope.</p> <p>12 Q. Did Mr. Leventon play any role in</p> <p>13 searching for, reviewing or producing responsive</p> <p>14 documents?</p> <p>15 A. Nope.</p> <p>16 Q. Did you ever speak with anybody</p> <p>17 employed by the debtor, other than Tara, about</p> <p>18 your document production?</p> <p>19 A. Tara's got an assistant, or my other</p> <p>20 assistant that works with Tara, Kelly, would have</p> <p>21 been the only other person.</p> <p>22 She might have been – Tara had to go</p> <p>23 back and see her girls during lunch, so I think</p> <p>24 she used Kelly to do some of the legwork.</p> <p>25 Q. Let's talk about the TRO for a</p>
<p style="text-align: right;">Page 84</p> <p>1 J. DONDERO</p> <p>2 second.</p> <p>3 MR. MORRIS: Can we put up Exhibit 9,</p> <p>4 please.</p> <p>5 (Dondero Deposition Exhibit 9</p> <p>6 marked.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. This is the temporary restraining</p> <p>9 order that was signed on December 10th.</p> <p>10 Do you see that?</p> <p>11 If we could scroll down just a little</p> <p>12 bit. Yeah.</p> <p>13 A. Okay.</p> <p>14 Q. You've never seen this document</p> <p>15 before, right?</p> <p>16 A. Yes, I haven't read it.</p> <p>17 Q. And I know I asked you earlier today</p> <p>18 what your understanding was of how this order</p> <p>19 restrained you.</p> <p>20 Do you remember those questions?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Is there anything, upon</p> <p>23 reflection, that you need to add in order to make</p> <p>24 the record complete as to your understanding of</p> <p>25 the scope of the injunction?</p>	<p style="text-align: right;">Page 85</p> <p>1 J. DONDERO</p> <p>2 A. Not at this moment.</p> <p>3 MR. MORRIS: Can you put up</p> <p>4 Exhibit 10, please.</p> <p>5 (Dondero Deposition Exhibit 10</p> <p>6 marked.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. All right. Have you seen this letter</p> <p>9 before, sir?</p> <p>10 A. No. I mean, not specifically. I</p> <p>11 probably received it, but I haven't read it.</p> <p>12 Q. All right. I just want to go back to</p> <p>13 the phone for a second to see if I can nail this</p> <p>14 down.</p> <p>15 Did you dispose of the phone</p> <p>16 somewhere around December 10th, 2020?</p> <p>17 A. I – I don't know. Probably.</p> <p>18 Q. Well, we just looked at that e-mail,</p> <p>19 right, that was from Mr. Rothstein.</p> <p>20 MR. MORRIS: Can we get that back?</p> <p>21 A. Yes.</p> <p>22 MR. MORRIS: I just want to see what</p> <p>23 the date of that was. Yes. Okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. So that's December 10th at 6:25 p.m.,</p>

<p style="text-align: right;">Page 86</p> <p>1 J. DONDERO</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So according to Mr. Rothstein,</p> <p>5 as of that date at that time, your phone was in</p> <p>6 Tara's desk, right?</p> <p>7 A. Yes.</p> <p>8 Q. You have no reason to disbelieve</p> <p>9 that, do you?</p> <p>10 MR. BONDS: Can you repeat the</p> <p>11 question? I'm sorry.</p> <p>12 MR. MORRIS: Withdrawn.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. So is it fair to say, then, that the</p> <p>15 phone was disposed of and thrown in the garbage</p> <p>16 sometime after December 10th?</p> <p>17 A. I don't know.</p> <p>18 Q. Well, as of December 10th,</p> <p>19 Mr. Rothstein told you that it was in Tara's</p> <p>20 desk, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So if he – Jason's not a</p> <p>23 liar, is he?</p> <p>24 A. No.</p> <p>25 Q. Do you have any reason to believe</p>	<p style="text-align: right;">Page 87</p> <p>1 J. DONDERO</p> <p>2 that the phone was anywhere other than Tara's</p> <p>3 desk at 6:25 p.m. on December 10th?</p> <p>4 A. I don't know.</p> <p>5 Q. You have no reason to believe that</p> <p>6 that statement by Mr. Rothstein is untrue,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Do you know how it came to be that</p> <p>10 the phone was disposed of in the manner that</p> <p>11 you've described?</p> <p>12 A. Nope.</p> <p>13 Q. You can't tell me who did it; is that</p> <p>14 right?</p> <p>15 A. Correct.</p> <p>16 Q. And you can't tell me when, after</p> <p>17 December 10th, that happened, right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Thank you. Let's go back to,</p> <p>20 I guess, Exhibit 10. If we can just scroll down</p> <p>21 a little bit.</p> <p>22 I understand that you haven't seen</p> <p>23 this document before. Go to the next page,</p> <p>24 please – no. Yeah, next page.</p> <p>25 Do you see the first full paragraph</p>
<p style="text-align: right;">Page 88</p> <p>1 J. DONDERO</p> <p>2 there beginning "On December 22nd"?</p> <p>3 A. I'm going to have to get up and read</p> <p>4 that. Just hold on a sec.</p> <p>5 Q. Okay. Take your time.</p> <p>6 A. Yes, I see that.</p> <p>7 Q. Okay. Having read that paragraph, do</p> <p>8 you have any basis to dispute any of the</p> <p>9 statements in that paragraph?</p> <p>10 MR. BONDS: I'm sorry. Can you read</p> <p>11 it again or can you ask your question again?</p> <p>12 MR. MORRIS: Sure. I'd like to know</p> <p>13 if Mr. Dondero has any basis to dispute any</p> <p>14 assertion made in that paragraph.</p> <p>15 A. I disagree with every sentence in</p> <p>16 that paragraph based on my 30 years of experience</p> <p>17 and understanding how to operate a registered</p> <p>18 investment advisor and how to do it in the</p> <p>19 interest of performance, investors and a</p> <p>20 registered investment advisor.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. All right. Let's try this</p> <p>23 differently. I shouldn't have done that.</p> <p>24 The first sentence, do you have any</p> <p>25 basis to disagree with any aspect of the first</p>	<p style="text-align: right;">Page 89</p> <p>1 J. DONDERO</p> <p>2 sentence of that paragraph? And let me just read</p> <p>3 it aloud, if I may.</p> <p>4 A. That – all right. What's your</p> <p>5 question?</p> <p>6 Q. Is there anything inaccurate about</p> <p>7 the first sentence?</p> <p>8 A. I believe my instructions in the</p> <p>9 e-mails we went over were to not do the trades.</p> <p>10 You know, that sentence implies not settle the</p> <p>11 trade, which means to not do the trades once they</p> <p>12 were already bona fide. I – I don't recall that</p> <p>13 ever being my contention.</p> <p>14 I would have preferred they be</p> <p>15 reversed, but my instructions, I believe, in</p> <p>16 everything we went over were to not do the</p> <p>17 trades, stop doing trades that are adverse to the</p> <p>18 interests of investors, but it wasn't regarding</p> <p>19 settling outstanding trades. So I think that</p> <p>20 sentence on its face is in error.</p> <p>21 Q. Okay. So but it's true, then, that</p> <p>22 you instructed employees of NPA and HCMFA on or</p> <p>23 around December 22nd to stop doing the trades of</p> <p>24 Avaya and Sky, correct?</p> <p>25 A. Yes.</p>



<p>Page 90</p> <p>1 J. DONDERO</p> <p>2 Q. Near the closing bell on – we're</p> <p>3 going to go back in time just a couple of days –</p> <p>4 on Friday the 18th, Mr. Sowin informed you that</p> <p>5 Seery wanted to sell these securities, right?</p> <p>6 A. I don't recall that specifically.</p> <p>7 MR. MORRIS: Okay. Can we put up</p> <p>8 Exhibit 11, please.</p> <p>9 (Dondero Deposition Exhibit 11</p> <p>10 marked.)</p> <p>11 MR. MORRIS: Okay. And if we can</p> <p>12 just go down to the bottom of it. Yeah.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. So that e-mail at the bottom, that's</p> <p>15 Mr. Seery's direction to sell Avaya securities</p> <p>16 from the CLOs, right?</p> <p>17 A. I don't know what's happening here.</p> <p>18 I don't know if this is fuzzy or my eyes are</p> <p>19 getting worse, but can we enlarge these a little</p> <p>20 bit, or I'm going to have to get up each time.</p> <p>21 Yeah. This is nutty and vindictive.</p> <p>22 I think everybody realizes that there's no</p> <p>23 liquidity in the markets the three days before</p> <p>24 Thanksgiving and Christmas. There's no urgency</p> <p>25 or reason to sell any of these securities that</p>	<p>Page 91</p> <p>1 J. DONDERO</p> <p>2 couldn't have waited until January or February.</p> <p>3 There's no business purpose in</p> <p>4 selling any of those securities, yet he's pushing</p> <p>5 them through for self-serving or vindictive</p> <p>6 reasons. I – or maybe trying to get more issues</p> <p>7 in front of the judge. I have no idea, but</p> <p>8 this – this stuff makes absolutely no sense and</p> <p>9 no business purpose.</p> <p>10 But I'm sorry, what's your question?</p> <p>11 MR. MORRIS: Okay. I move to strike</p> <p>12 and I'd ask you to listen to my question.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. It's simply that you learned, just</p> <p>15 before the closing bell on Friday, December 18th,</p> <p>16 that Mr. Seery wanted to sell Avaya securities</p> <p>17 out of the CLOs?</p> <p>18 MR. BONDS: Objection, form.</p> <p>19 THE WITNESS: Yeah, hold on. I need</p> <p>20 to interrupt for a second. When you strike</p> <p>21 something, does that mean it doesn't end up in</p> <p>22 the record?</p> <p>23 MR. MORRIS: The judge will decide</p> <p>24 whether or not it does. It's my request that the</p> <p>25 judge strike it from the record. She'll make the</p>
<p>Page 92</p> <p>1 J. DONDERO</p> <p>2 ruling.</p> <p>3 THE WITNESS: Okay. But then my</p> <p>4 lawyer can ask to put it in as my understanding</p> <p>5 of something at the end or something of the</p> <p>6 deposition or...</p> <p>7 MR. MORRIS: I don't want to give you</p> <p>8 legal advice, Mr. Dondero, but yes, that's</p> <p>9 generally how it works.</p> <p>10 THE WITNESS: Okay. Thank you.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. So again, the question is simply</p> <p>13 whether you learned near the closing bell on</p> <p>14 Friday, December 18th, that Mr. Seery wanted to</p> <p>15 sell Avaya shares out of the CLOs?</p> <p>16 MR. BONDS: Objection, form.</p> <p>17 A. It appears so.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. And can you just scroll up</p> <p>20 above that, please. And – okay.</p> <p>21 Do you see that Mr. Sowin, in fact,</p> <p>22 forwards this right to you?</p> <p>23 A. Yes.</p> <p>24 Q. And it was on the basis of this that</p> <p>25 you instructed the NPA and HCMFA employees not to</p>	<p>Page 93</p> <p>1 J. DONDERO</p> <p>2 execute these sales?</p> <p>3 A. Yes.</p> <p>4 Q. After the TRO was issued, did you</p> <p>5 ever instruct any employees of NPA or HCMFA not</p> <p>6 to interfere or impede with the debtor's</p> <p>7 management of the CLOs?</p> <p>8 A. No.</p> <p>9 Q. To the best of your knowledge, did</p> <p>10 anyone ever instruct the employees of NPA and</p> <p>11 HCMFA not to interfere or impede with the</p> <p>12 debtor's management of the CLOs?</p> <p>13 A. No.</p> <p>14 Q. Did you ever provide a copy of the</p> <p>15 TRO to any employees of NPA and HCMFA?</p> <p>16 A. I did not.</p> <p>17 Q. Do you know if anybody ever provided</p> <p>18 a copy of the TRO to any of the employees of NPA</p> <p>19 and HCMFA?</p> <p>20 A. I do not know.</p> <p>21 MR. MORRIS: Okay. Can we put up</p> <p>22 Exhibit 12, please.</p> <p>23 (Dondero Deposition Exhibit 12</p> <p>24 marked.)</p> <p>25 ///</p>

<p>Page 94</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. This is a letter that was sent</p> <p>4 to K&amp;L Gates.</p> <p>5 Do you know who K&amp;L Gates represents</p> <p>6 in connection with this matter?</p> <p>7 A. Some of the retail funds.</p> <p>8 Q. And do they also represent the two</p> <p>9 advisors?</p> <p>10 A. Yes. I believe they're one of –</p> <p>11 yes.</p> <p>12 Q. Attached to this letter, there's an</p> <p>13 Exhibit A, if we can go down, and we'll find a</p> <p>14 letter from K&amp;L Gates there. Okay.</p> <p>15 This is another letter from K&amp;L Gates</p> <p>16 dated December 22nd, 2020. Are you able to see</p> <p>17 that, sir? Can we scroll down a little bit?</p> <p>18 A. Yes. Yes, I can see the letter.</p> <p>19 Q. Okay. Were you aware that this</p> <p>20 letter was sent at the time that it was?</p> <p>21 A. I was aware, yes.</p> <p>22 Q. And these are the same entities,</p> <p>23 except for CLO Holdco, that had filed the prior</p> <p>24 motion that was denied by the Court, right?</p> <p>25 A. I'm sorry, ask that question again.</p>	<p>Page 95</p> <p>1 J. DONDERO</p> <p>2 These were –</p> <p>3 Q. Yeah, let me just do a little</p> <p>4 background.</p> <p>5 A couple of – about a week before</p> <p>6 this letter was sent, the entities represented by</p> <p>7 K&amp;L Gates, except for CLO Holdco, had made a</p> <p>8 motion in the bankruptcy court, right?</p> <p>9 A. Yes.</p> <p>10 Q. They had asked the Court to pause, to</p> <p>11 impose a pause on the debtor from selling any CLO</p> <p>12 assets; is that right?</p> <p>13 A. I don't – I don't know what</p> <p>14 exactly – I don't know the details of what they</p> <p>15 requested.</p> <p>16 Q. Okay. Did you authorize the filing</p> <p>17 of that motion?</p> <p>18 A. Authorize the filing? I</p> <p>19 championed – I pushed and encouraged the chief</p> <p>20 compliance officer and the general counsel to do</p> <p>21 what they believed was right as rigorously as</p> <p>22 possible, and it manifested itself in the letters</p> <p>23 that you're speaking of.</p> <p>24 Q. And you – and you approved of these</p> <p>25 letters, right?</p>
<p>Page 96</p> <p>1 J. DONDERO</p> <p>2 A. I – not directly and not</p> <p>3 specifically, but I encouraged them to do what</p> <p>4 they thought was right.</p> <p>5 Q. Okay. And you were aware that</p> <p>6 letters with the substance contained in them were</p> <p>7 going to be sent – (audio malfunction) –</p> <p>8 (Clarification requested by the</p> <p>9 stenographer.)</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. – to the debtor?</p> <p>12 THE STENOGRAPHER: And the answer</p> <p>13 again, please?</p> <p>14 MR. BONDS: And I objected as to</p> <p>15 form.</p> <p>16 THE STENOGRAPHER: And the answer</p> <p>17 again, please?</p> <p>18 A. I was aware that letters were being</p> <p>19 sent, and I was aware that motions – or a motion</p> <p>20 was being filed.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. This letter was also sent on behalf</p> <p>23 of CLO Holdco, Ltd.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p>Page 97</p> <p>1 J. DONDERO</p> <p>2 Q. Are you the direct or indirect</p> <p>3 economic or beneficial owner of CLO Holdco, Ltd.?</p> <p>4 A. No.</p> <p>5 Q. Who is?</p> <p>6 A. I believe the DAF and HarbourVest.</p> <p>7 Q. And who controls the DAF?</p> <p>8 A. Grant Scott.</p> <p>9 Q. Who is the beneficial owner of the</p> <p>10 DAF?</p> <p>11 A. Three char- – three or four</p> <p>12 charitable organizations.</p> <p>13 Q. And who controls CLO Holdco?</p> <p>14 A. I don't know exactly.</p> <p>15 Q. Do you?</p> <p>16 A. No.</p> <p>17 Q. And who are the possibilities?</p> <p>18 A. CLO Holdco, my understanding is it</p> <p>19 was a – it was an investment amalgamation</p> <p>20 between HarbourVest and the DAF, so with the DAF</p> <p>21 having the primary – or the largest ownership</p> <p>22 interest.</p> <p>23 Q. And with that largest ownership</p> <p>24 interest, is the DAF able to control CLO Holdco?</p> <p>25 A. I don't know. Maybe.</p>

<p style="text-align: right;">Page 98</p> <p>1 J. DONDERO</p> <p>2 Q. You've never asked that question?</p> <p>3 A. Nope.</p> <p>4 Q. Did you ever instruct any of the</p> <p>5 advisors or funds to withdraw this letter?</p> <p>6 MR. BONDS: Objection, form.</p> <p>7 A. No.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. To the best of your knowledge, has</p> <p>10 anyone on behalf of the advisors, the funds or</p> <p>11 CLO Holdco ever instructed K&amp;L Gates to withdraw</p> <p>12 this letter?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Okay. I want to just see if I can</p> <p>15 refresh your recollection a bit.</p> <p>16 When you talked about the DAF and</p> <p>17 HarbourVest, is it possible that you're confusing</p> <p>18 that with HCLOF?</p> <p>19 A. You know, you're right. It could be.</p> <p>20 Maybe it is CLO Holdco – you know what, let me</p> <p>21 just – let me not speculate. But the CLO Holdco</p> <p>22 might just be the DAF, and the combined entity</p> <p>23 might be the level above that. I – I don't know</p> <p>24 exactly. Let me leave it at that.</p> <p>25 Q. Okay. That's fair.</p>	<p style="text-align: right;">Page 99</p> <p>1 J. DONDERO</p> <p>2 This is the – I think you've</p> <p>3 testified – I'm trying to speed this up a little</p> <p>4 bit, believe it or not – that you supported the</p> <p>5 sending of this particular letter, right? And if</p> <p>6 you need to read more of it, let me know.</p> <p>7 A. No, I – again, the thrust of it, the</p> <p>8 theme of it, the – when you think bad or illegal</p> <p>9 or regulatorily inappropriate stuff has happened,</p> <p>10 what did you do, when you knew it, et cetera.</p> <p>11 And I think the responsibilities of that</p> <p>12 transcend a lot of things, you know.</p> <p>13 Q. But you are aware that these very</p> <p>14 same entities, except for CLO Holdco, had</p> <p>15 advanced the very same arguments to the</p> <p>16 bankruptcy court just six days earlier and their</p> <p>17 motion is denied, right?</p> <p>18 MR. BONDS: Objection, form.</p> <p>19 A. Yes. And with all due respect to the</p> <p>20 Court, it doesn't mean that it was wrong or</p> <p>21 inappropriate to advance the argument.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Okay. But having advanced the</p> <p>24 argument on December 16th and having had it</p> <p>25 rejected, you support these entities pressing the</p>
<p style="text-align: right;">Page 100</p> <p>1 J. DONDERO</p> <p>2 same arguments again against the debtor, right?</p> <p>3 A. We try and do what's right.</p> <p>4 MR. MORRIS: Okay. Can we put up</p> <p>5 Exhibit 13, please.</p> <p>6 (Dondero Deposition Exhibit 13</p> <p>7 marked.)</p> <p>8 MR. MORRIS: And if we can go to</p> <p>9 Exhibit A on the back. Thanks.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. This is another letter sent the next</p> <p>12 day, right, on December 23rd, from K&amp;L Gates?</p> <p>13 And we can scroll down further, again.</p> <p>14 Do you recall that there was yet</p> <p>15 another letter sent on the 23rd?</p> <p>16 A. Yeah, I don't recall specifically,</p> <p>17 but...</p> <p>18 Q. Can we scroll down a little bit</p> <p>19 further in this document.</p> <p>20 Do you recall that there came a time</p> <p>21 when K&amp;L Gates, on behalf of the advisors and the</p> <p>22 funds, told the debtor and its counsel that it</p> <p>23 was considering initiating the process for</p> <p>24 removing the debtor as portfolio manager of the</p> <p>25 CLOs?</p>	<p style="text-align: right;">Page 101</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. I believe they – I don't know if</p> <p>4 you're asking me a reservation of rights or</p> <p>5 whatever, but I think they should do everything</p> <p>6 as rigorously as possible to try and protect the</p> <p>7 investors.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Are you aware of any prohibition of</p> <p>10 doing what you're – withdrawn.</p> <p>11 Are you aware that the debtor made an</p> <p>12 offer to assign the CLO management agreements to</p> <p>13 NexPoint back in the beginning of December?</p> <p>14 A. I – I do remember that, and I did</p> <p>15 get a summary of that, and it was untenable in</p> <p>16 terms of what it was wrapped in.</p> <p>17 Q. What was untenable about it?</p> <p>18 A. Off the top of my head, it would give</p> <p>19 Seery releases for bad acts or inappropriate</p> <p>20 trades. It required a reimbursement for, I</p> <p>21 think, a million dollars of Pachulski fees</p> <p>22 relative to this subject, and I think it also</p> <p>23 wanted an up-front payment for the present value</p> <p>24 of the future management fees to be paid to the</p> <p>25 estate.</p>

<p style="text-align: right;">Page 102</p> <p>1 J. DONDERO</p> <p>2 Q. And who made the decision to reject</p> <p>3 the debtor's offer?</p> <p>4 A. Made a decision to reject the –</p> <p>5 reject the – it wasn't a rejection of the offer</p> <p>6 as much as a disagreement that that is the way</p> <p>7 CLO contracts transfer, that the manager doesn't</p> <p>8 have the right to extort from the next manager</p> <p>9 when the investors want to transfer.</p> <p>10 So there's a facilitation that</p> <p>11 Highland could provide, but Highland is not in a</p> <p>12 position, based on our understanding of the</p> <p>13 market, to demand consideration.</p> <p>14 Q. Okay. Who made the decision to</p> <p>15 reject the offer?</p> <p>16 A. I was involved in that. It wasn't a</p> <p>17 formal rejection, but it was a view that it was</p> <p>18 an inappropriate offer.</p> <p>19 Q. Did anybody decide or suggest that</p> <p>20 maybe we should make an appropriate offer?</p> <p>21 A. Not yet.</p> <p>22 Q. Was there any reason why, for the</p> <p>23 past month, when the debtor has provided an</p> <p>24 opportunity to transfer these CLO management</p> <p>25 contracts, that none of the advisors or anybody</p>	<p style="text-align: right;">Page 103</p> <p>1 J. DONDERO</p> <p>2 representing them has sought fit to make an</p> <p>3 appropriate counteroffer?</p> <p>4 A. We can get an appropriate</p> <p>5 counteroffer out tomorrow.</p> <p>6 Q. Okay. Is there anything that's</p> <p>7 prevented that over the last month instead of</p> <p>8 writing letters and engaging in this litigation?</p> <p>9 A. The fundamental prerequisites were so</p> <p>10 inappropriate that it dissuaded us from putting a</p> <p>11 normal, commercial, reasonable thing forward.</p> <p>12 But we'll put something commercial, reasonable</p> <p>13 and appropriate through tomorrow, and we'll see</p> <p>14 how far it goes.</p> <p>15 Q. Did you support the sending of this</p> <p>16 particular letter at the time it was sent?</p> <p>17 A. I – generally, yes.</p> <p>18 Q. Okay. Have you authorized any of the</p> <p>19 entities on this letter to initiate the process</p> <p>20 to remove the debtor as the fund manager of any</p> <p>21 CLO?</p> <p>22 MR. BONDS: Objection, form.</p> <p>23 A. That's not my position, and it's not</p> <p>24 without legal considerations regarding what's</p> <p>25 subject to a stay and what's appropriate at this</p>
<p style="text-align: right;">Page 104</p> <p>1 J. DONDERO</p> <p>2 juncture.</p> <p>3 But – but I believe, subject to</p> <p>4 whatever is legally appropriate, they should and</p> <p>5 they will be moving to replace the manager as</p> <p>6 quickly as possible and holding the manager</p> <p>7 responsible for bad acts prior to transfer.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Have you authorized any of the</p> <p>10 parties that are signatory to this letter to</p> <p>11 initiate the process to remove the debtor as the</p> <p>12 fund manager for the CLOs?</p> <p>13 A. I am not that involved. I haven't</p> <p>14 authorized it per se. Again, I'm encouraging the</p> <p>15 executives in charge to do the right thing, given</p> <p>16 the circumstances and what's best for investors,</p> <p>17 especially their retail investors and their</p> <p>18 obligations under the '40 Act.</p> <p>19 Q. You're the president of the two</p> <p>20 advisors, right?</p> <p>21 A. Yes.</p> <p>22 Q. And you're the portfolio manager of</p> <p>23 the funds, right?</p> <p>24 A. Yes.</p> <p>25 Q. Couldn't you give the direction to</p>	<p style="text-align: right;">Page 105</p> <p>1 J. DONDERO</p> <p>2 take steps to initiate the process to remove the</p> <p>3 debtor?</p> <p>4 MR. BONDS: I'm sorry, can you repeat</p> <p>5 the question?</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Don't you have the power to do that?</p> <p>8 MR. BONDS: I'm sorry. I couldn't</p> <p>9 hear your question.</p> <p>10 MR. MORRIS: Withdrawn.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you ever discuss with any – with</p> <p>13 anybody about whether to initiate the process to</p> <p>14 remove the debtor as the portfolio manager of the</p> <p>15 CLOs?</p> <p>16 A. I think it's a logical remedy, and I</p> <p>17 believe the executives, and particularly like the</p> <p>18 executives – the chief compliance officer always</p> <p>19 has personal liability, and I think Jason Post</p> <p>20 knows that, and I think he's pushing as hard as</p> <p>21 he can for the benefit of investors in a</p> <p>22 situation where people are moving against the</p> <p>23 best interests of investors.</p> <p>24 And I encourage him to move as</p> <p>25 aggressively as possible subject to whatever the</p>

<p>Page 106</p> <p>1 J. DONDERO</p> <p>2 limits of bankruptcy court is, but I can't be –</p> <p>3 I've got too many other things to do to be</p> <p>4 directly involved in the details, so I'm not</p> <p>5 involved in the details.</p> <p>6 Q. I see.</p> <p>7 Did you ever instruct the parties</p> <p>8 that are signatory – withdrawn.</p> <p>9 Did you ever instruct K&amp;L Gates to</p> <p>10 withdraw this letter?</p> <p>11 A. No.</p> <p>12 Q. To the best of your knowledge, has</p> <p>13 anybody on behalf of the advisors, the funds or</p> <p>14 CLO Holdco ever instructed K&amp;L Gates to withdraw</p> <p>15 this letter?</p> <p>16 A. No.</p> <p>17 Q. Will you commit that each of the</p> <p>18 entities on whose behalf this letter was sent</p> <p>19 will cease and desist from taking any steps to</p> <p>20 initiate the process to remove the debtor as the</p> <p>21 CLO manager?</p> <p>22 MR. BONDS: Objection, form.</p> <p>23 A. Say that again.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Will you commit on behalf of each of</p>	<p>Page 107</p> <p>1 J. DONDERO</p> <p>2 the funds and the advisors to cease and desist</p> <p>3 from taking any steps to replace the debtor as</p> <p>4 the portfolio manager of the CLOs?</p> <p>5 A. That would be inappropriate. I'm not</p> <p>6 sure it would be illegal, but I think it would be</p> <p>7 a regulatory breach, and I think it would not be</p> <p>8 in the best interest of investors if we were to</p> <p>9 agree to anything like that. I think that's nuts</p> <p>10 and it's nutty to ask that.</p> <p>11 Q. People say that about me all the</p> <p>12 time.</p> <p>13 Did you ever exchange any e-mails or</p> <p>14 texts with any employee of the parties on this</p> <p>15 document, on the issue of whether or how to</p> <p>16 remove the debtor as the CLO's fund manager?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Did you ever discuss with any</p> <p>19 employee of the debtor the topic of removing the</p> <p>20 debtor as the portfolio manager of the CLOs?</p> <p>21 A. Not that I recall.</p> <p>22 MR. MORRIS: Okay. It's 1:35. Can</p> <p>23 we just take a ten-minute break and resume – is</p> <p>24 it 12:35 where you are, Mr. Dondero? We'll</p> <p>25 resume at 1:45 Eastern, 12:45 Central.</p>
<p>Page 108</p> <p>1 J. DONDERO</p> <p>2 THE WITNESS: I'm sorry, I can't hear</p> <p>3 you. We return at what time?</p> <p>4 MR. MORRIS: In ten minutes, at</p> <p>5 12:45.</p> <p>6 MR. BONDS: And I want to say too,</p> <p>7 John, that your notice showed that there was a</p> <p>8 1:30 deposition Central Time of somebody else,</p> <p>9 and we intend – I mean, we planned on that, so</p> <p>10 we're going to need to be through at 1:30.</p> <p>11 MR. MORRIS: Yeah, you can do that if</p> <p>12 you want. You can do that if you want, but the</p> <p>13 record will also reflect that we started at least</p> <p>14 20 minutes late and we took at least a 35-minute</p> <p>15 break for Mr. Dondero. So you leave whenever you</p> <p>16 want, but be guided by that.</p> <p>17 Let's take a break.</p> <p>18 MR. BONDS: Well, I'm telling you</p> <p>19 that if you want to go forward, you can.</p> <p>20 MR. MORRIS: I will. Thank you. I</p> <p>21 appreciate that.</p> <p>22 THE WITNESS: All right. See you</p> <p>23 guys in 10 minutes.</p> <p>24 THE VIDEOGRAPHER: 12:36 p.m.,</p> <p>25 Central Standard Time. We're off the record.</p>	<p>Page 109</p> <p>1 J. DONDERO</p> <p>2 (Recess taken, 12:36 p.m. to</p> <p>3 12:49 p.m. CST)</p> <p>4 THE VIDEOGRAPHER: 12:49 p.m.,</p> <p>5 Central Standard Time. We're back on the record.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. All right. Can you hear me,</p> <p>8 Mr. Dondero?</p> <p>9 A. Yes.</p> <p>10 Q. Is it fair – do you think it's fair</p> <p>11 to say that your personal interests are adverse</p> <p>12 to the debtor's?</p> <p>13 A. No.</p> <p>14 Q. They asked for your resignation back</p> <p>15 in October, right?</p> <p>16 A. Yes.</p> <p>17 Q. And you opposed the debtor's plan on</p> <p>18 file, right?</p> <p>19 A. Yes.</p> <p>20 Q. And you objected to the debtor's</p> <p>21 settlement with ACIS; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And you're going to object to the</p> <p>24 debtor's settlement with HarbourVest; is that</p> <p>25 right?</p>



<p style="text-align: right;">Page 110</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. I don't know for sure. I believe so.</p> <p>4 I don't know.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. And the debtor commenced an adversary</p> <p>7 proceeding against you; is that right?</p> <p>8 MR. BONDS: Objection, form.</p> <p>9 A. I'm not aware of that in particular.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. The debtor sought and obtained a TRO</p> <p>12 against you; isn't that right?</p> <p>13 A. Oh. Okay, yes.</p> <p>14 Q. And they also started a lawsuit?</p> <p>15 They filed a complaint against you – is that</p> <p>16 right – for preliminary and permanent injunctive</p> <p>17 relief?</p> <p>18 A. I'm aware of it, yes.</p> <p>19 Q. And the debtor has removed you from</p> <p>20 its offices, right?</p> <p>21 A. Yes.</p> <p>22 Q. And based on all of that, would you</p> <p>23 agree that your personal interests are adverse to</p> <p>24 the debtor?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 111</p> <p>1 J. DONDERO</p> <p>2 Q. Okay. Since the TRO was entered,</p> <p>3 have you ever discussed your litigation strategy</p> <p>4 with Mr. Ellington?</p> <p>5 A. Not – no. Not that I'm aware of.</p> <p>6 That's not the subject of our conversations.</p> <p>7 He's more of a go-between, and he's more of an</p> <p>8 overall strategist.</p> <p>9 Q. And he's a strategist for your – you</p> <p>10 know, for the defense and prosecution of your</p> <p>11 personal interests, right?</p> <p>12 A. No.</p> <p>13 Q. No?</p> <p>14 Do you remember that there were</p> <p>15 actually two motions on the calendar on</p> <p>16 December 16th? There was the motion that you</p> <p>17 brought that was called, I guess, the active</p> <p>18 ordinary course transactions motion, and then</p> <p>19 there was the motion brought by the K&amp;L Gates</p> <p>20 firm on behalf of – (audio malfunction) –</p> <p>21 (Clarification requested by the</p> <p>22 stenographer.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. – the advisors and the funds, where</p> <p>25 they sought the pause of the sale of CLO assets.</p>
<p style="text-align: right;">Page 112</p> <p>1 J. DONDERO</p> <p>2 Do you remember that those two</p> <p>3 motions were on the calendar a couple of weeks</p> <p>4 ago?</p> <p>5 A. I remember that K&amp;L Gates one. The</p> <p>6 first one, I don't remember.</p> <p>7 Q. Do you remember discussing with</p> <p>8 Mr. Ellington the need for a witness for one of</p> <p>9 those motions?</p> <p>10 A. No. I don't remember the motion.</p> <p>11 Q. Do you remember that Mr. Ellington</p> <p>12 suggested that J.P. Sevilla serve as a witness</p> <p>13 for one of those motions?</p> <p>14 A. I don't remember that.</p> <p>15 MR. MORRIS: Put up Exhibit 15,</p> <p>16 please.</p> <p>17 (Dondero Deposition Exhibit 15</p> <p>18 marked.)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. If we can go down here, do you see</p> <p>21 that on Saturday, December 12th, Mr. Lynn wrote</p> <p>22 to you and said: It looks like a trial?</p> <p>23 A. Yes.</p> <p>24 Q. Can you scroll up above that, please.</p> <p>25 Keep going. And then Mr. Lynn – I'm sorry, not</p>	<p style="text-align: right;">Page 113</p> <p>1 J. DONDERO</p> <p>2 so much.</p> <p>3 And then Mr. Lynn wrote: That said,</p> <p>4 we must have a witness now.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Now, go up to the top, and</p> <p>8 Mr. Ellington writes to you and to others: It</p> <p>9 will be J.P. Sevilla. I will tell him that he</p> <p>10 needs to contact you first thing in the morning.</p> <p>11 Have I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Now, this is after the TRO is</p> <p>14 entered, right?</p> <p>15 A. Like I said, I'm not – I see my name</p> <p>16 on the cc list. I don't have an awareness of</p> <p>17 what this is about, so...</p> <p>18 Q. Okay. Do you know what trial</p> <p>19 Mr. Sevilla was going to testify at?</p> <p>20 A. No.</p> <p>21 Q. You didn't produce –</p> <p>22 A. You can refresh my memory, but I</p> <p>23 don't have a recollection from this.</p> <p>24 Q. To be fair, Mr. Dondero, I don't</p> <p>25 know. This is discovery, and I'm just asking a</p>

<p style="text-align: right;">Page 114</p> <p>1 J. DONDERO</p> <p>2 question, if you know.</p> <p>3 A. Okay.</p> <p>4 Q. Do you recall if you produced this</p> <p>5 e-mail in discovery?</p> <p>6 A. I have no idea.</p> <p>7 Q. Do you recall looking to</p> <p>8 Mr. Ellington for leadership in helping to</p> <p>9 coordinate all the lawyers acting on your behalf</p> <p>10 and on behalf of the entities owned and</p> <p>11 controlled by you?</p> <p>12 A. I know I needed some coordination,</p> <p>13 but I think I went in a different direction, and</p> <p>14 that's why I brought on Douglas Draper, and he's</p> <p>15 been functioning in that role of joint defense</p> <p>16 and coordination.</p> <p>17 Q. But you did tell Mr. Ellington, after</p> <p>18 the TRO was entered, that you needed him to</p> <p>19 provide leadership with respect to the</p> <p>20 coordination of your litigation interests, right?</p> <p>21 A. I – I don't – I don't remember.</p> <p>22 Like I said, I ended up going in a different</p> <p>23 direction, but I – I don't – I don't know as</p> <p>24 far as your question is concerned.</p> <p>25 MR. MORRIS: Okay. Can we put up</p>	<p style="text-align: right;">Page 115</p> <p>1 J. DONDERO</p> <p>2 Exhibit 16, please.</p> <p>3 (Dondero Deposition Exhibit 16</p> <p>4 marked.)</p> <p>5 MR. MORRIS: Scroll down to the</p> <p>6 bottom. Not that far. Right there.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. So this is an e-mail from Mr. Draper</p> <p>9 to you on December 16th.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 MR. BONDS: I'm going to object.</p> <p>13 Mr. Draper is a lawyer.</p> <p>14 MR. MORRIS: He is. I understand</p> <p>15 that.</p> <p>16 MR. BONDS: Anything that was</p> <p>17 produced that relates to Douglas Draper and Mike</p> <p>18 Lynn and Jim Dondero is attorney-client</p> <p>19 privileged.</p> <p>20 MR. MORRIS: You're entitled to make</p> <p>21 that assertion, but if we just look at the top so</p> <p>22 we can clear this up. All the way to the top.</p> <p>23 Mr. Dondero forwards this to Mr. Ellington.</p> <p>24 Mr. Ellington is not Mr. Dondero's personal</p> <p>25 lawyer. He is the lawyer for the debtor, and</p>
<p style="text-align: right;">Page 116</p> <p>1 J. DONDERO</p> <p>2 your firm doesn't represent any business</p> <p>3 interest, so there's no claim that this is</p> <p>4 somehow provided pursuant to a shared services</p> <p>5 agreement. Unless you can tell me that there's a</p> <p>6 common – (audio malfunction) –</p> <p>7 (Clarification requested by the</p> <p>8 stenographer.)</p> <p>9 MR. MORRIS: – a common interest</p> <p>10 between Mr. Ellington and Mr. Dondero,</p> <p>11 Mr. Dondero has waived the privilege. State your</p> <p>12 position, and I'm happy to state mine, but I need</p> <p>13 to ask questions.</p> <p>14 Can we go back down to the bottom,</p> <p>15 please. All right.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. So on December 16th, Mr. Draper is</p> <p>18 looking to get a joint meeting together, right?</p> <p>19 Do you remember that?</p> <p>20 A. I'm sorry, what's the question?</p> <p>21 Q. Do you recall that on or around</p> <p>22 December 16th, Mr. Draper was looking to get a</p> <p>23 joint meeting among all the lawyers representing</p> <p>24 you and your business interests as well as the</p> <p>25 employees for Highland?</p>	<p style="text-align: right;">Page 117</p> <p>1 J. DONDERO</p> <p>2 A. What I do know is Douglas Draper has</p> <p>3 put together a mutual defense agreement, and I</p> <p>4 think the 16th is right about when he came on</p> <p>5 board. He had to reach out and get people's</p> <p>6 e-mails and contact information and be able to</p> <p>7 coordinate it.</p> <p>8 But he's now fully engaged and fully</p> <p>9 functional in that role. Ellington is not</p> <p>10 involved in that role at all. Can you – but I</p> <p>11 don't know exact time frames or exactly who said</p> <p>12 what to who when, but go ahead, ask me whatever</p> <p>13 you want.</p> <p>14 Q. You mentioned a mutual defense</p> <p>15 agreement. Do I have that right?</p> <p>16 MR. BONDS: Objection –</p> <p>17 A. I don't know what – I don't know</p> <p>18 what the legal term is.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Okay. But there's a joint –</p> <p>21 MR. BONDS: Don't talk about that,</p> <p>22 Jim.</p> <p>23 MR. MORRIS: Okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Let me ask you this: Did Scott</p>

<p>Page 118</p> <p>1 J. DONDERO</p> <p>2 Ellington participate in the drafting of the</p> <p>3 joint interest or mutual defense agreement?</p> <p>4 A. No.</p> <p>5 Q. Did Isaac Leventon participate in the</p> <p>6 drafting of a joint defense or mutual defense</p> <p>7 agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you ever discuss with either of</p> <p>10 them the topic of a joint defense or a mutual</p> <p>11 defense agreement?</p> <p>12 A. That was entirely with Draper.</p> <p>13 Q. Okay. Let's scroll up the page a</p> <p>14 little bit. There's a response from Mr. Lynn.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And then if we scroll up a little</p> <p>18 further, you forward it to Mr. Ellington, right?</p> <p>19 If we can go to the –</p> <p>20 A. Yes.</p> <p>21 Q. And you said: I'm going to need you</p> <p>22 to provide leadership here.</p> <p>23 Have I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. Why did you send this e-mail string</p>	<p>Page 119</p> <p>1 J. DONDERO</p> <p>2 to Mr. Ellington on December 16th?</p> <p>3 A. I don't remember.</p> <p>4 Q. What leadership were you looking for?</p> <p>5 A. I can't piece it together from here.</p> <p>6 I don't remember. I can't piece it together from</p> <p>7 the e-mail, and I don't remember.</p> <p>8 Q. Why did you need Mr. Ellington to</p> <p>9 provide leadership?</p> <p>10 A. I don't know.</p> <p>11 Q. Does –</p> <p>12 A. I don't remember.</p> <p>13 Q. Okay. Does looking at the topic, a</p> <p>14 list for a joint meeting, refresh your</p> <p>15 recollection that you wanted Mr. Ellington to</p> <p>16 coordinate all of the lawyers working on your</p> <p>17 behalf and on behalf of the entities in which you</p> <p>18 own an interest?</p> <p>19 A. No. I mean, because that was the</p> <p>20 beginning of the string, but the middle of the</p> <p>21 string starts going in different directions. I</p> <p>22 can't say – I can't say what I wanted him to</p> <p>23 have leadership with.</p> <p>24 Q. Can you think of any – any issue at</p> <p>25 all, looking at this e-mail string, as to what he</p>
<p>Page 120</p> <p>1 J. DONDERO</p> <p>2 would be providing leadership for if it's not to</p> <p>3 coordinate your defense counsel?</p> <p>4 A. I don't want to speculate, but</p> <p>5 again – I don't want to speculate, but again,</p> <p>6 the middle of the string looks like it goes in</p> <p>7 different directions than just forming the mutual</p> <p>8 defense thing.</p> <p>9 Q. Okay. So you have no recollection</p> <p>10 why you forwarded this e-mail to Mr. Ellington on</p> <p>11 December 16th and why you told him that you need</p> <p>12 him to provide leadership here; is that your</p> <p>13 testimony?</p> <p>14 A. Correct.</p> <p>15 Q. Is Mr. Ellington a party to any joint</p> <p>16 defense or mutual defense agreement that you're a</p> <p>17 party to?</p> <p>18 A. I believe the employees' counsel is</p> <p>19 part of the working group, although I've been on</p> <p>20 calls when the employees' counsel has been on and</p> <p>21 when it hasn't. But I don't even – I think the</p> <p>22 employee group is divided into a couple different</p> <p>23 groups, and I don't know if Ellington is part of</p> <p>24 both groups.</p> <p>25 But I – Ellington individually is</p>	<p>Page 121</p> <p>1 J. DONDERO</p> <p>2 not part of the working group, and I'm not sure</p> <p>3 which, if one or both, of the employee groups</p> <p>4 he's in.</p> <p>5 Q. So there's two employee groups; is</p> <p>6 that right?</p> <p>7 A. I'm beyond my involvement and</p> <p>8 expertise, but I thought there were two employee</p> <p>9 groups, but I don't even know that for sure.</p> <p>10 Q. And has your counsel conferred with</p> <p>11 counsel for either or both of the employee</p> <p>12 groups?</p> <p>13 MR. BONDS: I'm sorry, can you repeat</p> <p>14 the question?</p> <p>15 MR. MORRIS: Yes.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Has your counsel at Bonds Ellis</p> <p>18 conferred with counsel for either or both of the</p> <p>19 employee groups?</p> <p>20 A. I don't know.</p> <p>21 MR. MORRIS: John, I would call for</p> <p>22 the immediate production of any –</p> <p>23 MR. BONDS: I don't think we have it,</p> <p>24 but I can check on that.</p> <p>25 MR. MORRIS: I would call for the</p>



<p>Page 122</p> <p>1 J. DONDERO</p> <p>2 immediate production of any joint defense or</p> <p>3 mutual defense agreement to which any debtor</p> <p>4 employee is a party –</p> <p>5 MR. BONDS: I don't think that there</p> <p>6 are any.</p> <p>7 MR. MORRIS: And I would call for any</p> <p>8 drafts, okay?</p> <p>9 MR. BONDS: Again, I don't think</p> <p>10 there are any.</p> <p>11 MR. MORRIS: Okay. You can give me</p> <p>12 that representation.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Let's look at the top, at</p> <p>15 Mr. Ellington's response. And what did he tell</p> <p>16 you in response to your statement that you need</p> <p>17 him to provide leadership?</p> <p>18 A. You mean the two words there?</p> <p>19 Q. Yep.</p> <p>20 A. It looks like he typed back: On it.</p> <p>21 Q. Yeah.</p> <p>22 Did Mr. Ellington subsequently</p> <p>23 provide leadership, as you had asked?</p> <p>24 A. I don't remember. Nothing I can</p> <p>25 recall.</p>	<p>Page 123</p> <p>1 J. DONDERO</p> <p>2 Q. Did Mr. Ellington ever participate in</p> <p>3 any conference calls with your counsel at Bonds</p> <p>4 Ellis?</p> <p>5 A. Not that – not that I recall.</p> <p>6 Ellington's time has been spent primarily, the</p> <p>7 vast majority, representing and working with the</p> <p>8 employee group. I know that. It's been</p> <p>9 difficult to get his attention on anything else</p> <p>10 so –</p> <p>11 Q. Listen carefully to my question. I'm</p> <p>12 not asking you to tell me what Mr. Ellington</p> <p>13 does. I'm simply asking whether you know that</p> <p>14 Mr. Ellington has participated in conference</p> <p>15 calls with your counsel at Bonds Ellis at any</p> <p>16 time after December 10th.</p> <p>17 A. I don't know.</p> <p>18 Q. Did you ever participate in any calls</p> <p>19 with Mr. Ellington and any lawyer at Bonds Ellis?</p> <p>20 A. Over the year, for sure. There have</p> <p>21 been – earlier in the year there were several</p> <p>22 times, but I can't recall one recently.</p> <p>23 Q. So you have no recollection of ever</p> <p>24 participating in a phone call with Mr. Ellington</p> <p>25 and any lawyer at Bonds Ellis at any time since</p>
<p>Page 124</p> <p>1 J. DONDERO</p> <p>2 December 10th; is that your testimony?</p> <p>3 A. I – I can't recall. I'm willing to</p> <p>4 be refreshed. I can't recall. There were –</p> <p>5 there were – some of the calls that stick out in</p> <p>6 my mind I believe occurred prior to that date, so</p> <p>7 I can't – I can't recall any post that date.</p> <p>8 Q. Okay. You didn't produce this e-mail</p> <p>9 in response to the Court's order, did you?</p> <p>10 A. I don't know.</p> <p>11 Q. And that's because you didn't take</p> <p>12 the time to look at the production before it was</p> <p>13 delivered to my firm, right?</p> <p>14 A. I – I believe the – yeah, I mean,</p> <p>15 it's a process I don't – I don't get directly</p> <p>16 involved in. Counsel has to decide what's</p> <p>17 responsive, what's privileged, what's complete,</p> <p>18 what's appropriate. That's not my job.</p> <p>19 Q. Are you aware that any documents for</p> <p>20 which a privilege was asserted were supposed to</p> <p>21 be delivered to the Court last December 31st?</p> <p>22 A. I'm not saying that's what – I have</p> <p>23 no idea whether we produced this or didn't</p> <p>24 produce it. And if we didn't, I don't know why.</p> <p>25 Q. Do you know that the UCC has asked</p>	<p>Page 125</p> <p>1 J. DONDERO</p> <p>2 for the financial statements for Dugaboy and Get</p> <p>3 Good?</p> <p>4 MR. BONDS: Objection, you're going</p> <p>5 far afield from where we're – this TRO.</p> <p>6 MR. MORRIS: You can take that</p> <p>7 position if you want, but I assure you, when I'm</p> <p>8 done, you'll understand.</p> <p>9 MR. BONDS: I'm going to instruct the</p> <p>10 witness not to answer the question.</p> <p>11 MR. MORRIS: You're not going to let</p> <p>12 him answer as to whether or not the UCC wanted</p> <p>13 the Dugaboy and Get Good financial statements?</p> <p>14 MR. BONDS: I can't hear you.</p> <p>15 MR. MORRIS: Yeah, I apologize.</p> <p>16 It's – it's not me, John. Let me just ask</p> <p>17 again. Are you – you're going to instruct your</p> <p>18 witness not to answer the question of whether he</p> <p>19 knew that the UCC wanted the Dugaboy and Get Good</p> <p>20 financial statements?</p> <p>21 MR. BONDS: I'll let you go one –</p> <p>22 you can ask that one question. But anything</p> <p>23 further into Dugaboy is not something that is for</p> <p>24 the Court to determine at this point in this</p> <p>25 case.</p>

<p style="text-align: right;">Page 126</p> <p>1 J. DONDERO</p> <p>2 MR. MORRIS: Okay.</p> <p>3 So you can answer that question, sir.</p> <p>4 A. I think there have been several times</p> <p>5 over the last year that Dugaboy financials have</p> <p>6 been requested by a variety of entities. I don't</p> <p>7 know when or recently or if the UCC requested it</p> <p>8 recently.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. You know a number of different</p> <p>11 parties have asked for the Dugaboy and Get Good</p> <p>12 financial statements; is that right?</p> <p>13 MR. BONDS: I'm going to object to</p> <p>14 any answer that you may give following up on</p> <p>15 Dugaboy. Dugaboy is not subject to the TRO and</p> <p>16 you're stuck with your adversary proceeding.</p> <p>17 MR. MORRIS: John, there is a text</p> <p>18 message that we're going to get to in a moment,</p> <p>19 so I'll end the suspense. Mr. Dondero</p> <p>20 specifically says: Don't produce the Dugaboy</p> <p>21 financial statements without a subpoena. Those</p> <p>22 documents were in the debtor's possession. I</p> <p>23 will tell you that I personally made at least a</p> <p>24 half a dozen requests of Mr. Ellington and</p> <p>25 Mr. Leventon for those documents.</p>	<p style="text-align: right;">Page 127</p> <p>1 J. DONDERO</p> <p>2 I will tell you that Jim Seery</p> <p>3 instructed them to provide those documents</p> <p>4 because they're in the debtor's possession,</p> <p>5 custody and control.</p> <p>6 I will tell you that there's no</p> <p>7 shared services agreement between Dugaboy or Get</p> <p>8 Good and the debtor, and there is no basis for</p> <p>9 those – for Mr. Ellington and Mr. Leventon to</p> <p>10 have obstructed the debtor's obligation to</p> <p>11 provide those documents except in Mr. Dondero's</p> <p>12 hands.</p> <p>13 MR. BONDS: I'm going to instruct the</p> <p>14 witness not to answer the question.</p> <p>15 MR. MORRIS: I think that might be a</p> <p>16 good idea. On what basis?</p> <p>17 MR. BONDS: I don't need to give a</p> <p>18 basis. I think that you've gone far, far from</p> <p>19 what we're here on today, which is –</p> <p>20 MR. MORRIS: I believe that it's –</p> <p>21 MR. BONDS: – specifically –</p> <p>22 MR. MORRIS: I'm sorry to interrupt.</p> <p>23 Go ahead, John.</p> <p>24 MR. BONDS: Specifically, it's the</p> <p>25 TRO and the injunction.</p>
<p style="text-align: right;">Page 128</p> <p>1 J. DONDERO</p> <p>2 MR. MORRIS: Correct. And the TRO</p> <p>3 specifically – I know Mr. Dondero doesn't know</p> <p>4 this because he hasn't read the document, but in</p> <p>5 addition to the things that he mentioned, it also</p> <p>6 prevents him from interfering with the debtor's</p> <p>7 business.</p> <p>8 The debtor is a litigant here. The</p> <p>9 debtor has an obligation to provide these</p> <p>10 documents. And he interfered with that</p> <p>11 obligation.</p> <p>12 Let me ask my questions and you can</p> <p>13 direct him not to answer every single time if you</p> <p>14 want, okay?</p> <p>15 MR. BONDS: Okay.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Do you know a woman named Melissa,</p> <p>18 Mr. Dondero?</p> <p>19 A. Yes.</p> <p>20 Q. And who is that?</p> <p>21 A. She's my personal accountant.</p> <p>22 Q. Does she work at the Highland</p> <p>23 offices?</p> <p>24 A. Yes.</p> <p>25 Q. Is she employed by the debtor?</p>	<p style="text-align: right;">Page 129</p> <p>1 J. DONDERO</p> <p>2 A. I believe so.</p> <p>3 Q. Do you know what her title is?</p> <p>4 A. No.</p> <p>5 Q. Do you directly or indirectly</p> <p>6 control – withdrawn.</p> <p>7 Do you directly or indirectly own</p> <p>8 Dugaboy?</p> <p>9 A. No.</p> <p>10 Q. Who owns Dugaboy?</p> <p>11 MR. BONDS: I'm going to instruct the</p> <p>12 witness not to answer that question.</p> <p>13 MR. MORRIS: Are you going to follow</p> <p>14 your counselor's advice?</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Who controls Dugaboy?</p> <p>18 MR. BONDS: I'm going to instruct the</p> <p>19 witness not to answer that question, for the</p> <p>20 second time.</p> <p>21 MR. MORRIS: Are you going to</p> <p>22 follow – yeah, we'll do this every time, John,</p> <p>23 just for the record.</p> <p>24 MR. BONDS: That's fine.</p> <p>25 MR. MORRIS: So I apologize. I</p>

<p>Page 130</p> <p>1 J. DONDERO</p> <p>2 appreciate, you know, you do your job, I'll do</p> <p>3 mine.</p> <p>4 Mr. Dondero, are you going to follow</p> <p>5 your counsel's advice?</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. To the best of your knowledge,</p> <p>9 Dugaboy does not have a shared services agreement</p> <p>10 with the debtor, correct?</p> <p>11 You can answer, sir.</p> <p>12 THE WITNESS: I'm not answering,</p> <p>13 right? I'm not answering any questions on this</p> <p>14 subject.</p> <p>15 MR. MORRIS: Only if your lawyer</p> <p>16 instructs you to do that, and he hasn't done that</p> <p>17 for this question.</p> <p>18 MR. BONDS: I'm going to instruct the</p> <p>19 witness not to answer the question.</p> <p>20 MR. MORRIS: You're not going to let</p> <p>21 him answer whether Dugaboy has a shared services</p> <p>22 agreement with the debtor?</p> <p>23 MR. BONDS: I think that you're</p> <p>24 entitled to that, so Jim, you can answer that</p> <p>25 question.</p>	<p>Page 131</p> <p>1 J. DONDERO</p> <p>2 A. I – I don't know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Okay. Are you familiar with an</p> <p>5 entity called Get Good?</p> <p>6 A. Yes.</p> <p>7 Q. Do you directly or indirectly own Get</p> <p>8 Good?</p> <p>9 A. No.</p> <p>10 Q. Do you control, directly or</p> <p>11 indirectly, Get Good?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Who owns Get Good?</p> <p>14 MR. BONDS: I'm going to instruct the</p> <p>15 witness not to answer the question.</p> <p>16 MR. MORRIS: Are you going to follow</p> <p>17 your counselor's advice?</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Who controls Get Good?</p> <p>21 MR. BONDS: Instruct the witness not</p> <p>22 to answer the question.</p> <p>23 MR. MORRIS: Are you going to follow</p> <p>24 your counselor's advice, Mr. Dondero?</p> <p>25 THE WITNESS: I'm going to follow his</p>
<p>Page 132</p> <p>1 J. DONDERO</p> <p>2 advice, yes.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. To the best of your knowledge, Get</p> <p>5 Good does not have a shared services agreement</p> <p>6 with the debtor, does it?</p> <p>7 THE WITNESS: Can I answer that or</p> <p>8 not answer that one?</p> <p>9 MR. BONDS: Yes, you can.</p> <p>10 A. I don't know.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you ever discuss the request by</p> <p>13 any party to produce the financial statements of</p> <p>14 Get Good and Dugaboy with Scott Ellington?</p> <p>15 MR. BONDS: I'm going to tell you –</p> <p>16 advise you not to answer the question.</p> <p>17 MR. MORRIS: Are you going to follow</p> <p>18 your counselor's advice?</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Did you ever communicate with</p> <p>22 Mr. Leventon on the subject matter of whether or</p> <p>23 not the financial statements for Get Good and</p> <p>24 Dugaboy needed to be produced by the debtor?</p> <p>25 MR. BONDS: I'm going to advise the</p>	<p>Page 133</p> <p>1 J. DONDERO</p> <p>2 witness not to answer the question.</p> <p>3 MR. MORRIS: Are you going to follow</p> <p>4 your counselor's advice?</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Did you ever communicate with anybody</p> <p>8 at any time who was employed by the debtor</p> <p>9 regarding the production of the Dugaboy and Get</p> <p>10 Good financial statements?</p> <p>11 MR. BONDS: I'm going to instruct the</p> <p>12 witness not to answer the question.</p> <p>13 MR. MORRIS: Are you going to follow</p> <p>14 your counselor's advice?</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Melissa is Melissa Schroth, right?</p> <p>18 A. Yes.</p> <p>19 Q. She's an executive accountant</p> <p>20 employed by the debtor, right?</p> <p>21 A. Yes.</p> <p>22 Q. And after December 10th, 2020</p> <p>23 Ms. Schroth told you that a request had been made</p> <p>24 for the production of the Dugaboy financial</p> <p>25 statements, correct?</p>

<p>Page 134</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: You can answer the</p> <p>3 question.</p> <p>4 A. I don't remember.</p> <p>5 MR. MORRIS: Okay. Can we put up</p> <p>6 Exhibit 17, please.</p> <p>7 (Dondero Deposition Exhibit 17</p> <p>8 marked.)</p> <p>9 MR. MORRIS: Can you scroll down a</p> <p>10 little bit? I'm sorry. Scroll up so we can see</p> <p>11 who this text was sent to.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Is that Melissa Schroth?</p> <p>14 A. Yes.</p> <p>15 Q. And if we scroll back down, do you</p> <p>16 see that you tell Ms. Schroth on December 16th:</p> <p>17 No Dugaboy details without a subpoena?</p> <p>18 A. Yes.</p> <p>19 Q. That's a text that you sent to her on</p> <p>20 December 16th, correct?</p> <p>21 A. I believe so.</p> <p>22 Q. What prompted you to send this text?</p> <p>23 A. I don't know.</p> <p>24 Q. You don't have any recollection as to</p> <p>25 why you would tell Melissa, quote, no Dugaboy</p>	<p>Page 135</p> <p>1 J. DONDERO</p> <p>2 details without a subpoena?</p> <p>3 A. No, but that would – I mean, I stand</p> <p>4 behind that response, but I don't remember why.</p> <p>5 Q. Do you remember who was asking for</p> <p>6 the documents?</p> <p>7 A. Nope.</p> <p>8 Q. Do you remember any discussion with</p> <p>9 any person at any time concerning the production</p> <p>10 of the Dugaboy or Get Good financial statements?</p> <p>11 A. Nope.</p> <p>12 Q. Do you have any objection to the</p> <p>13 debtor producing the Dugaboy and Get Good</p> <p>14 financial statements?</p> <p>15 A. I'm sorry, say that again?</p> <p>16 Q. Would you consent to the debtor's</p> <p>17 production of the Get Good and Dugaboy financial</p> <p>18 statements?</p> <p>19 A. With a subpoena. I stand by that</p> <p>20 statement, yeah.</p> <p>21 Q. Okay. Do you know of any reason why</p> <p>22 Mr. Ellington and Mr. Leventon would have failed</p> <p>23 to respond to Mr. Seery's instruction to produce</p> <p>24 the Dugaboy and Get Good financial statements</p> <p>25 that were requested by the – (audio</p>
<p>Page 136</p> <p>1 J. DONDERO</p> <p>2 malfunction) –</p> <p>3 (Clarification requested by the</p> <p>4 stenographer.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. – UCC?</p> <p>7 A. I don't want to speculate.</p> <p>8 Q. Have you heard of the law firm</p> <p>9 Baker &amp; McKenzie?</p> <p>10 A. Yes.</p> <p>11 Q. Does that firm or any lawyer at that</p> <p>12 firm represent you in your individual capacity?</p> <p>13 A. No.</p> <p>14 Q. Does that firm or any lawyer at that</p> <p>15 firm represent any entity in which you have a</p> <p>16 direct or indirect ownership interest?</p> <p>17 A. No. Not that I'm aware of, no.</p> <p>18 Q. I'm sorry, one second.</p> <p>19 Does that firm or any lawyer at that</p> <p>20 firm represent any entity that you directly or</p> <p>21 indirectly control?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Do you recall asking Isaac Leventon</p> <p>24 for the contact information for the – for the</p> <p>25 lawyers at Baker &amp; McKenzie?</p>	<p>Page 137</p> <p>1 J. DONDERO</p> <p>2 A. I – I don't – I don't – it might</p> <p>3 have been for part of the shared defense, mutual</p> <p>4 defense, whatever, agreement, but that's –</p> <p>5 that's the only reason why I would have asked for</p> <p>6 it.</p> <p>7 Q. Okay. What's your understanding as</p> <p>8 to – (audio malfunction) –</p> <p>9 (Clarification requested by the</p> <p>10 stenographer.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. – the parties to that mutual defense</p> <p>13 agreement that you just referred to, or shared</p> <p>14 defense?</p> <p>15 A. I – it's what I've testified</p> <p>16 already, Douglas Draper is coordinating it.</p> <p>17 I'm – I'm not sure whether the employees are on</p> <p>18 it or not, and I'm not sure if there's one</p> <p>19 employee group or two employee groups, and I'm</p> <p>20 not sure if one or both of them are part of that</p> <p>21 agreement or not.</p> <p>22 But the – in recent history, my only</p> <p>23 awareness of Baker McKenzie is with regard to</p> <p>24 representing the employees. That's my only</p> <p>25 awareness of that firm.</p>

<p style="text-align: right;">Page 138</p> <p>1 J. DONDERO</p> <p>2 Q. Have you ever spoken with an attorney</p> <p>3 at Baker McKenzie?</p> <p>4 A. No, I have not.</p> <p>5 MR. MORRIS: Okay. Can you put up</p> <p>6 Exhibit 18, please.</p> <p>7 (Dondero Deposition Exhibit 18</p> <p>8 marked.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. That's Mr. Leventon. Do I have that</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. And you're communicating with him on</p> <p>14 or around – after December 10th, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And if you could scroll down a</p> <p>17 little bit, right there, on December 22nd, you</p> <p>18 asked Mr. Leventon to send you the Baker &amp;</p> <p>19 McKenzie contact person, right?</p> <p>20 A. Yes.</p> <p>21 Q. And if you scroll down a little bit.</p> <p>22 Did he ever send that to you?</p> <p>23 A. I'm sorry?</p> <p>24 Q. Did he ever send that to you?</p> <p>25 A. I don't know. I don't remember.</p>	<p style="text-align: right;">Page 139</p> <p>1 J. DONDERO</p> <p>2 Q. Why did you want the Baker &amp; McKenzie</p> <p>3 contact information?</p> <p>4 A. I was trying to help Draper</p> <p>5 coordinate the mutual shared defense agreement.</p> <p>6 Q. And it was your intent and desire to</p> <p>7 have the Baker McKenzie firm participate in that</p> <p>8 agreement, right?</p> <p>9 A. No. I'm not a lawyer. The</p> <p>10 appropriateness of who's in that group under what</p> <p>11 circumstances representing who was a legal</p> <p>12 decision made by Draper.</p> <p>13 Q. So why didn't you just have Draper</p> <p>14 deal with this? Why did you deal with it?</p> <p>15 A. He was scurrying around, moving</p> <p>16 quickly, trying to get contact information for</p> <p>17 potential various different parties. I was just</p> <p>18 helping him get the contact information.</p> <p>19 Q. And you –</p> <p>20 MR. BONDS: I'm going to instruct you</p> <p>21 not to say anything relating to this as far as</p> <p>22 what he and Draper discussed.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. You were aware at the time that you</p> <p>25 asked for the Baker &amp; McKenzie contact</p>
<p style="text-align: right;">Page 140</p> <p>1 J. DONDERO</p> <p>2 information that Baker &amp; McKenzie was a law firm</p> <p>3 that – that employees were considering retaining</p> <p>4 for their personal interests, right?</p> <p>5 A. I knew they were involved with the</p> <p>6 employees. Whether – whether or when they were</p> <p>7 engaged and by which employee group and – I</p> <p>8 don't have details like that. I never did.</p> <p>9 Q. But the one thing that you did know,</p> <p>10 when you asked for the Baker &amp; McKenzie contact</p> <p>11 information, is that Baker &amp; McKenzie would be</p> <p>12 representing some group of Highland employees,</p> <p>13 correct?</p> <p>14 A. Or they might be. Or they were being</p> <p>15 interviewed at the time. I think they weren't</p> <p>16 formally engaged until later. I don't know these</p> <p>17 details and never did.</p> <p>18 MR. BONDS: I'm going to instruct the</p> <p>19 witness –</p> <p>20 THE WITNESS: I'm sorry, what?</p> <p>21 MR. BONDS: You need to stop.</p> <p>22 THE WITNESS: Okay.</p> <p>23 MR. MORRIS: Why is that? Please</p> <p>24 don't interrupt the witness. Assert the</p> <p>25 privilege if you want, direct him not to answer,</p>	<p style="text-align: right;">Page 141</p> <p>1 J. DONDERO</p> <p>2 but don't interrupt his answers.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Baker McKenzie was ultimately</p> <p>5 retained by some group of the debtor's employees,</p> <p>6 correct?</p> <p>7 A. I believe so.</p> <p>8 Q. Do you know how Baker McKenzie got</p> <p>9 their retainer, their retainer money?</p> <p>10 A. No idea.</p> <p>11 Q. Do you know – are you familiar with</p> <p>12 an entity called Gov Re?</p> <p>13 A. Yes.</p> <p>14 Q. What's Gov Re?</p> <p>15 A. It's a Bermuda-based reinsurance</p> <p>16 company.</p> <p>17 Q. Do you have an ownership interest in</p> <p>18 Gov Re?</p> <p>19 A. I don't know.</p> <p>20 Q. Do any – do any entities in which</p> <p>21 you have an interest have an ownership interest</p> <p>22 in Gov Re?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know who controls Gov Re?</p> <p>25 A. I don't know.</p>



<p>Page 142</p> <p>1 J. DONDERO</p> <p>2 Q. Do you make any decisions on behalf</p> <p>3 of Gov Re?</p> <p>4 A. Not recently. Not in the last year.</p> <p>5 In prior years, I think I've helped them with</p> <p>6 investments and some strategy, but not recently.</p> <p>7 Q. Do you know whether Gov Re has made</p> <p>8 any payment to Baker &amp; McKenzie in the last</p> <p>9 30 days?</p> <p>10 A. I have no idea.</p> <p>11 Q. Did you ever have a communication</p> <p>12 with anybody at any time in the last 30 days as</p> <p>13 to -- (audio malfunction) --</p> <p>14 (Clarification requested by the</p> <p>15 stenographer.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. -- as to whether Gov Re would pay</p> <p>18 money to Baker &amp; McKenzie on behalf of some of</p> <p>19 the debtor's employees?</p> <p>20 A. Nope. No, I have no idea. I've</p> <p>21 never heard the daisy chain you're connecting.</p> <p>22 I've never heard it before.</p> <p>23 MR. MORRIS: Let's take a break. I</p> <p>24 might be finished. The time now is 2:32, or 1:32</p> <p>25 Central. Let's just come back sharply at 1:45,</p>	<p>Page 143</p> <p>1 J. DONDERO</p> <p>2 or 2:45.</p> <p>3 THE VIDEOGRAPHER: 1:32 p.m. Central</p> <p>4 Standard Time. We're off the record.</p> <p>5 (Recess taken, 1:32 p.m. to</p> <p>6 1:50 p.m. CST)</p> <p>7 THE VIDEOGRAPHER: 1:50 p.m. Central</p> <p>8 Standard Time. We're back on the record.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I just have a few more minutes here.</p> <p>11 Going back to Gov Re, Mr. Dondero,</p> <p>12 are you on the board of that entity?</p> <p>13 A. I don't know.</p> <p>14 Q. Can you identify any person who sits</p> <p>15 on that board?</p> <p>16 A. No.</p> <p>17 Q. Do you know how many people sit on</p> <p>18 that board?</p> <p>19 A. No.</p> <p>20 Q. Do you have an understanding as to</p> <p>21 who makes decisions as to whether or not Gov Re</p> <p>22 should make -- (audio malfunction) --</p> <p>23 (Clarification requested by the</p> <p>24 stenographer.)</p> <p>25 MR. MORRIS: Withdrawn.</p>
<p>Page 144</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Dondero, do you know who makes</p> <p>4 decisions on behalf of Gov Re as to whether or</p> <p>5 not to make payments on claims?</p> <p>6 A. No.</p> <p>7 Q. Did you ever participate in any</p> <p>8 decisions concerning the payment of claims made</p> <p>9 under a Gov Re policy?</p> <p>10 A. Not in five years. I think I was</p> <p>11 more involved five years ago, but I don't</p> <p>12 remember.</p> <p>13 Q. So you don't know if you sit on the</p> <p>14 board of directors, you don't know who makes</p> <p>15 decisions to pay claims, and you can't identify</p> <p>16 any members of the board; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And you don't know if you have</p> <p>19 an indirect or direct ownership interest in</p> <p>20 Gov Re; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. You've spent some time over</p> <p>23 the last months trying to put together a</p> <p>24 so-called pot plan; is that right?</p> <p>25 A. Yes.</p>	<p>Page 145</p> <p>1 J. DONDERO</p> <p>2 Q. Since December 10th, 2020, have you</p> <p>3 had any communications with any employee of the</p> <p>4 debtor concerning the pot plan?</p> <p>5 A. It's been a struggle to put together</p> <p>6 a pot plan. There's been an intentional block of</p> <p>7 any information, even assets, at Highland, so any</p> <p>8 pot plan is a stab in the dark for me when I put</p> <p>9 it forward, relative to current assets and likely</p> <p>10 outcome.</p> <p>11 But developing the pot plan has been</p> <p>12 something I think that's been applauded by the</p> <p>13 judge; at different times it's been encouraged by</p> <p>14 creditors, you know. But the only people -- Dave</p> <p>15 Klos has helped with creating the model so that</p> <p>16 the model makes sense and adds up and is</p> <p>17 distributable. Dave Klos has been the person</p> <p>18 that I've accessed throughout the year regarding</p> <p>19 the pot plan.</p> <p>20 Q. And is it fair to say that you've</p> <p>21 communicated with Mr. Klos about the pot plan</p> <p>22 since December 10th, 2020?</p> <p>23 A. Probably. You know, to the extent</p> <p>24 that the pot plan has come up, been considered or</p> <p>25 distributed, yes.</p>

<p>Page 146</p> <p>1 J. DONDERO</p> <p>2 Q. Okay. Can you identify any other</p> <p>3 employees of the debtor with whom you've</p> <p>4 discussed the pot plan with since December 10th,</p> <p>5 2020?</p> <p>6 A. No.</p> <p>7 Q. Did you discuss it with</p> <p>8 Mr. Waterhouse?</p> <p>9 A. Mr. Waterhouse is Klos' direct</p> <p>10 supervisor. He probably had an awareness of it</p> <p>11 from those conversations. I don't recall. I</p> <p>12 mean, I don't – maybe – I mean, there have</p> <p>13 been, maybe, peripherally, not significant, I</p> <p>14 don't think, since the 16th, but I don't recall.</p> <p>15 Q. Did you ever get any balance sheets</p> <p>16 or financial information about MultiStrat from</p> <p>17 Scott Ellington?</p> <p>18 A. No.</p> <p>19 Q. Did you ever get any financial</p> <p>20 information, including balance sheets, concerning</p> <p>21 MultiStrat, from Isaac Leventon?</p> <p>22 A. No. They – I wouldn't believe that</p> <p>23 those guys would have it. I wouldn't even think</p> <p>24 to ask them for it. It wouldn't be – I don't</p> <p>25 think it's natural for them to have it. But no,</p>	<p>Page 147</p> <p>1 J. DONDERO</p> <p>2 I never did, no.</p> <p>3 MR. MORRIS: Okay. I have no further</p> <p>4 questions, just two points that I'd like to make.</p> <p>5 John, will you agree on behalf of</p> <p>6 Mr. Dondero to have him appear at Friday's</p> <p>7 hearing when the preliminary injunction takes</p> <p>8 place or do I need to serve a subpoena?</p> <p>9 MR. BONDS: No, we haven't made that</p> <p>10 decision yet.</p> <p>11 MR. MORRIS: Okay. Will you accept a</p> <p>12 subpoena on behalf of Mr. Dondero?</p> <p>13 MR. BONDS: Sure.</p> <p>14 MR. MORRIS: Okay. We'll get that</p> <p>15 over to you tomorrow.</p> <p>16 And then lastly, the deposition of</p> <p>17 Andrew Clubok has been adjourned to a date to be</p> <p>18 determined.</p> <p>19 MR. BONDS: Okay.</p> <p>20 MR. MORRIS: Thank you very much,</p> <p>21 all.</p> <p>22 MR. BONDS: Thanks.</p> <p>23 THE VIDEOGRAPHER: 1:56 p.m. –</p> <p>24 1:57 p.m. Central Standard Time. We're off the</p> <p>25 record. This concludes the deposition.</p>
<p>Page 148</p> <p>1 J. DONDERO</p> <p>2 (Time noted: 1:57 p.m. CST)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 _____</p> <p>9 JAMES D. DONDERO</p> <p>10</p> <p>11 Subscribed and sworn to before me this _____</p> <p>12 day of _____, 20____.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 149</p> <p>1</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4 I, MICHAEL E. MILLER, FAPR, RDR, CRR,</p> <p>5 Notary Public in and for the State of Texas, do</p> <p>6 hereby certify:</p> <p>7 That JAMES D. DONDERO, the witness</p> <p>8 whose deposition is hereinbefore set forth, was</p> <p>9 duly sworn by me and that such deposition is a</p> <p>10 true record of the testimony given by such</p> <p>11 witness;</p> <p>12 That pursuant to FRCP Rule 30,</p> <p>13 signature of the witness was not requested by the</p> <p>14 witness or other party before the conclusion of</p> <p>15 the deposition;</p> <p>16 I further certify that I am not</p> <p>17 related to any of the parties to this action by</p> <p>18 blood or marriage; and that I am in no way</p> <p>19 interested in the outcome of this matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto</p> <p>21 set my hand on January 5, 2021.</p> <p>22</p> <p>23 _____</p> <p>24 MICHAEL E. MILLER, FAPR, RDR, CRR</p> <p>25 NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS</p>

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4	Dep. Date: January 5, 2021	
5	Deponent: JAMES D. DONDERO	
6	Pg. Ln. Now Reads Should Read Reason	
7	____	
8	____	
9	____	
10	____	
11	____	
12	____	
13	____	
14	____	
15	____	
16	____	
17		
18		
19	____	
20	Signature of Deponent	
21	SUBSCRIBED AND SWORN BEFORE ME	
22	THIS ____ DAY OF _____, 20____.	
23		
24	____	
25	(Notary Public) MY COMMISSION EXPIRES: ____	



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